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THE

LAWS OF ENGLAND.

VOLUME XXIV.

Law. I
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THE

LAWS OF ENGLAND

BEING

A COMPLETE STATEMENT OF THE WHOLE LAW OF ENGLAND.

BY

THE RIGHT HONOURABLE THE

EARL OF HALSBURY

LORD HIGH CHANCELLOR OF GREAT BRITAIN,
1885-86, 1886-92, and 1895-1905,

AND OTHER LAWYERS.

VOLUME XXIV.

RATES AND RATING.
REAL PROPERTY AND CHATTELS REAL.
RECEIVERS.
REGISTRATION OF BIRTHS, MARRIAGES, AND DEATHS.
RENTCHARGES AND ANNUITIES.
REVENUE.

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Constitutional Law - ,, CONSTITUTIONAL LAW.
Crown Revenues - ,, CONSTITUTIONAL LAW.
Estate Duty - - ,, ESTATE AND OTHER DEATH DUTIES.
House of Commons - ,, PARLIAMENT.
Income Tax - - ,, INCOME TAX.
Inhabited House Duty ,, INHABITED HOUSE DUTY.
Land Tax - - ,, LAND TAX.
Legacy Duty - - ,, ESTATE AND OTHER DEATH DUTIES.
Mint - - - ,, CONSTITUTIONAL LAW.
Parliament - - ,, CONSTITUTIONAL LAW; PARLIAMENT.
Post Office - - ,, POST OFFICE.
Succession Duty - ,, ESTATE AND OTHER DEATH DUTIES.
Super-tax - - - ,, INCOME TAX.

REVENUES OF THE CROWN.

See CONSTITUTIONAL LAW.

REVERSIONS AND REMAINDERS.

See REAL PROPERTY AND CHATTELS REAL; SETTLEMENTS.

REVISING BARRISTERS.

See BARRISTERS; ELECTIONS.

REVOCATION OF WILLS.

See WILLS.

REWARD.

See CRIMINAL LAW AND PROCEDURE.

RIGHT OF AUDIENCE.

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RIPARIAN RIGHTS.

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RITUAL.

See ECCLESIASTICAL LAW.

RIVERS.

See WATERS AND WATERCOURSES.

ROADS.

See HIGHWAYS, STREETS, AND BRIDGES.

ROBBERY.

See CRIMINAL LAW AND PROCEDURE.

ROMAN CATHOLICS.

See ECCLESIASTICAL LAW.

ROYAL AGRICULTURAL SOCIETY.

See AGRICULTURE.

ROYAL FAMILY.

See CONSTITUTIONAL LAW.

ABBREVIATIONS

USED IN THIS WORK.

A. C. (preceded by date) ..	Law Reports, Appeal Cases, House of Lords, since 1890 (*e.g.* [1891] A. C.)
A.-G.	Attorney-General
Act.	Acton's Reports, Prize Causes, 2 vols., 1809—1841
Ad. & El.	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols., 1834—1842
Adam	Adam's Justiciary Reports (Scotland), 1893—(current)
Add.	Addams' Ecclesiastical Reports, 3 vols., 1822—1826
Adv.-Gen.	Advocate-General
Alc. & N.	Alcock and Napier's Reports, King's Bench (Ireland), 1 vol., 1813—1833
Alc. Reg. Cas.	Alcock's Registry Cases (Ireland), 1 vol., 1832—1841
Aleyn	Aleyn's Reports, King's Bench, fol., 1 vol., 1646—1649
Amb.	Ambler's Reports, Chancery, 2 vols., 1725—1783
And.	Anderson's Reports, Common Pleas, fol., 2 parts in one vol., 1535—1605
Andr.	Andrews' Reports, King's Bench, fol., 1 vol., 1737—1740
Anon.	Anonymous
Anst.	Anstruther's Reports, Exchequer, 3 vols., 1792—1797
App. Cas.	Law Reports, Appeal Cases, House of Lords, 15 vols., 1875—1890
Arkley	Arkley's Justiciary Reports (Scotland), 1 vol., 1846—1848
Arm. M. & O.	Armstrong, Macartney, and Ogle's Civil and Criminal Reports (Ireland), 1840—1842
Arn.	Arnold's Reports, Common Pleas, 2 vols., 1838—1839
Arn. & H.	Arnold and Hodges' Reports, Queen's Bench, 1 vol., 1840—1841
Asp. M. L. C.	Aspinall's Maritime Law Cases, 1870—(current)
Ashb.	Ashburner's Principles of Equity, 1902
Atk.	Atkyns' Reports, Chancery, 3 vols., 1736—1754
Ayl. Pan.	Ayliffe's New Pandect of Roman Civil Law
Ayl. Par.	Ayliffe's Parergon Juris Canonici Anglicani
B. & Ad...	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830—1834
B. & Ald.	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817—1822
B. & C.	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822—1830
B. & S.	Best and Smith's Reports, Queen's Bench, 10 vols., 1861—1870
Bac. Abr.	Bacon's Abridgment
Bail Ct. Cas.	Bail Court Cases (Lowndes and Maxwell), vol., 1852—1854
Baild.	Baildon's Select Cases in Chancery (Selden Society, Vol. X.)
Ball & B.	Ball and Beatty's Reports, Chancery (Ireland), 2 vols., 1807—1814
Bankr. & Ins. R. ..	Bankruptcy and Insolvency Reports, 2 vols., 1853—1855

Bar. & Arn.	Barron & Arnold's Election Cases, 1 vol., 1843—1846
Bar. & Aust.	Barron & Austin's Election Cases, 1 vol., 1842
Barn. (CH.)	Barnardiston's Reports, Chancery, fol., 1 vol., 1740—1741
Barn. (K. B.)	Barnardiston's Reports, King's Bench, fol., 2 vols., 1726—1734
Barnes	Barnes' Notes of Cases of Practice, Common Pleas, 1 vol., 1732—1760
Batt.	Batty's Reports, King's Bench (Ireland), 1 vol., 1825—1826
Beat.	Beatty's Reports, Chancery (Ireland), 1 vol., 1813—1830
Beav.	Beavan's Reports, Rolls Court, 36 vols., 1838—1866
Beav. & Wal.	Beavan and Walford's Railway Parliamentary Cases, 1 vol., 1846
Beaw.	Beawes's Lex Mercatoria
Bellewe	Bellewe's Cases *temp.* Richard II., King's Bench, 1 vol.
Bell, C. C.	T. Bell's Crown Cases Reserved, 1 vol., 1858—1860
Bell, Ct. of Sess. ..	R. Bell's Decisions, Court of Session (Scotland), 1 vol., 1790—1792
Bell, Ct. of Sess. fol. ..	R. Bell's Decisions, Court of Session (Scotland), fol., 1 vol., 1794—1795
Bell, Dict. Dec. ..	S. S. Bell's Dictionary of Decisions, Court of Session (Scotland), 2 vols., 1808—1833
Bell, Sc. App.	S. S. Bell's Scotch Appeals, House of Lords, 7 vols., 1842—1850
Belt's Sup.	Belt's Supplement to Vesey Sen., Chancery, 1 vol., 1746—1756
Benl.	Benloe's (or Bendloe's) Reports, King's Bench and Common Pleas, fol., 1 vol., 1515—1627
Ben. & D.	Benloe and Dalison's Reports, Common Pleas, fol., 1 vol., 1357—1579
Bing.	Bingham's Reports, Common Pleas, 10 vols., 1822—1834
Bing. (N. C.)	Bingham's New Cases, Common Pleas, 6 vols., 1834—1840
Bitt. Prac. Cas.	Bittleston's Practice Cases in Chambers under the Judicature Acts, 1873 and 1875, 1 vol., 1875—1876
Bitt. Rep. in Ch. ..	Bittleston's Reports in Chambers (Queen's Bench Division), 1 vol., 1883—1884
Bl. Com.	Blackstone's Commentaries
Bl. D. & Osb.	Blackham, Dundas, and Osborne's Reports, Practice and Nisi Prius (Ireland), 1 vol., 1846—1848
Bli.	Bligh's Reports, House of Lords, 4 vols., 1819—1821
Bli. (N. S.)	Bligh's Reports, House of Lords, New Series, 11 vols., 1827—1837
Bos. & P.	Bosanquet and Puller's Reports, Common Pleas, 3 vols., 1796—1804
Bos. & P. (N. R.) ..	Bosanquet and Puller's New Reports, Common Pleas, 2 vols., 1804—1807
Bract.	Bracton De Legibus et Consuetudinibus Angliæ
Bro. Abr.	Sir J. Brooke's Abridgment
Bro. C. C.	W. Brown's Chancery Reports, 4 vols., 1778—1794
Bro. Ecc. Rep.	W. G. Brooke's Ecclesiastical Reports, Privy Council, 1 vol., 1850—1872
Bro. (N. C.)	Sir R. Brooke's New Cases, 1 vol., 1515—1558
Bro. Parl. Cas.	J. Brown's Cases in Parliament, 8 vols., 1702—1800
Bro. Supp. to Mor. ..	M. P. Brown's Supplement to Morison's Dictionary of Decisions, Court of Session (Scotland), 5 vols.
Bro. Synop.	M. P. Brown's Synopsis of Decisions, Court of Session (Scotland), 4 vols., 1532—1827
Brod. & Bing.	Broderip and Bingham's Reports, Common Pleas, 3 vols., 1819—1822

Brod. & F.	Brodrick and Fremantle's Ecclesiastical Reports, Privy Council, 1 vol., 1705—1864
Broun	Broun's Justiciary Reports (Scotland), 2 vols., 1842—1845
Brown. & Lush. ..	Browning and Lushington's Reports, Admiralty, 1 vol., 1863—1866
Brownl.	Brownlow and Goldesborough's Reports, Common Pleas, 2 parts, 1569—1624
Bruce	Bruce's Decisions, Court of Session (Scotland), 1714—1715
Buchan.	Buchanan's Reports, Court of Session and Justiciary (Scotland), 1806—1813
Buck	Buck's Cases in Bankruptcy, 1 vol., 1816—1820
Bulst.	Bulstrode's Reports, King's Bench, fol., 3 parts in 1 vol., 1610—1626
Bunb.	Bunbury's Reports, Exchequer, fol., 1 vol., 1713—1741
Burr.	Burrow's Reports, King's Bench, 5 vols., 1756—1772
Burr. S. C.	Burrow's Settlement Cases, King's Bench, 1 vol., 1733—1776
Burrell	Burrell's Reports, Admiralty, ed. by Marsden, 1 vol., 1648—1840
C. A.	Court of Appeal
C. B.	Common Bench Reports, 18 vols., 1845—1856
C. B. (N. S.)	Common Bench Reports, New Series, 20 vols., 1856—1865
C. C. A.	Court of Criminal Appeal
C. C. Ct. Cas.	Central Criminal Court Cases (Sessions Papers), 1834—(current)
C. L. R.	Common Law Reports, 3 vols., 1853—1855
C. P. D.	Law Reports, Common Pleas Division, 5 vols., 1875—1880
C. & P.	Carrington and Payne's Reports, Nisi Prius, 9 vols., 1823—1841
Cab. & El.	Cababé and Ellis's Reports, Queen's Bench Division, 1 vol., 1882—1885
Cald. Mag. Cas. ..	Caldecott's Magistrates Cases, 1 vol., 1777—1786
Calth.	Calthrop's City of London Cases, King's Bench, 1 vol., 1609—1618
Camp.	Campbell's Reports, Nisi Prius, 4 vols., 1807—1816
Carp. Pat. Cas.	Carpmael's Patent Cases, 2 vols., 1602—1842
Car. & Kir.	Carrington and Kirwan's Reports, Nisi Prius, 3 vols., 1843—1853
Car. & M.	Carrington and Marshman's Reports, Nisi Prius, 1 vol., 1841—1843
Cart.	Carter's Reports, Common Pleas, fol., 1 vol., 1664—1673
Carth.	Carthew's Reports, King's Bench, fol., 1 vol., 1687—1700
Cary	Cary's Reports, Chancery, 1 vol.
Cas. in Ch.	Cases in Chancery, fol., 3 parts, 1660—1697
Cas. Pract. K. B. ..	Cases of Practice, King's Bench, 1 vol., 1655—1775
Cas. Sett.	Cases of Settlements and Removals, 1 vol., 1689—1727
Cas. *temp.* Finch ..	Cases *temp.* Finch, Chancery, fol., 1 vol., 1673—1680
Cas. *temp.* King ..	Select Cases *temp.* King, Chancery, fol., 1 vol., 1724—1733
Cas. *temp.* Talb... ..	Cases in Equity *temp.* Talbot, fol., 1 vol., 1730—1737
Ch. (preceded by date) ..	Law Reports, Chancery Division, since 1890 (*e.g.*, [1891] 1 Ch.)
Ch. App...	Law Reports, Chancery Appeals, 10 vols., 1865—1875
Ch. D.	Law Reports, Chancery Division, 45 vols., 1875—1890
Ch. Rob.	Christopher Robinson's Reports, Admiralty, 6 vols., 1798—1808

Char. Pr. Cas.	Charley's New Practice Reports, 3 vols., 1875—1876
Char. Cham. Cas. ..	Charley's Chamber Cases, 1 vol., 1875—1876
Chit.	Chitty's Practice Reports, King's Bench, 2 vols., 1770—1822
Cl. & Fin.	Clark and Finnelly's Reports, House of Lords, 12 vols., 1831—1846
Clay.	Clayton's Reports and Pleas of Assises at Yorke, 1 vol., 1631—1650
Clif. & Rick.	Clifford and Rickards' Locus Standi Reports, 3 vols., 1873—1884
Clif. & Steph.	Clifford and Stephens' Locus Standi Reports, 2 vols., 1867—1872
Cockb. & Rowe	Cockburn and Rowe's Election Cases, 1 vol., 1833
Co. Ent.	Coke's Entries
Co. Inst.	Coke's Institutes
Co. Litt.	Coke on Littleton (1 Inst.)
Co. Rep.	Coke's Reports, 13 parts, 1572—1616
Coll.	Collyer's Reports, Chancery, 2 vols., 1844—1846
Coll. Jurid.	Collectanea Juridica, 2 vols.
Colles	Colles' Cases in Parliament, 1 vol., 1697—1713
Colt.	Coltman's Registration Cases, 1 vol., 1879—1885
Com.	Comyns' Reports, King's Bench, Common Pleas, and Exchequer, fol., 2 vols., 1695—1740
Com. Cas.	Commercial Cases, 1895—(current)
Com. Dig.	Comyns' Digest
Comb.	Comberbach's Reports, King's Bench, fol., 1 vol., 1685—1698
Con. & Law.	Connor and Lawson's Reports, Chancery (Ireland), 2 vols., 1841—1843
Cooke & Al.	Cooke and Alcock's Reports, King's Bench (Ireland), 1 vol., 1833—1834
Cooke, Pr. Cas. ..	Cooke's Practice Reports, Common Pleas, 1 vol., 1706—1747
Cooke, Pr. Reg.	Cooke's Practical Register of the Common Pleas, 1 vol., 1702—1742
Coop. G.	G. Cooper's Reports, Chancery, 1 vol., 1792—1815
Coop. Pr. Cas.	C. P. Cooper's Reports, Chancery Practice, 1 vol., 1837—1838
Coop. *temp.* Brough. ..	C. P. Cooper's Cases *temp.* Brougham, Chancery, 1 vol., 1833—1834
Coop. *temp.* Cott. ..	C. P. Cooper's Cases *temp.* Cottenham, Chancery 2 vols., 1846—1848 (and miscellaneous earlier cases
Corb. & D.	Corbett and Daniell's Election Cases, 1 vol., 1819
Couper	Couper's Justiciary Reports (Scotland), 5 vols., 1868—1885
Cowp.	Cowper's Reports, King's Bench, 2 vols., 1774—1778
Cox, C. C.	E. W. Cox's Criminal Law Cases, 1843—(current)
Cox & Atk.	Cox and Atkinson's Registration Appeal Cases, 1 vol., 1843—1846
Cox, Eq. Cas.	S. C. Cox's Equity Cases, 2 vols., 1745—1797
Cox, M. & H.	Cox, Macrae, and Hertslet's County Courts Cases and Appeals, Vol. I., 1846—1852
Cr. & J.	Crompton and Jervis's Reports, Exchequer, 2 vols., 1830—1832
Cr. & M.	Crompton and Meeson's Reports, Exchequer, 2 vols., 1832—1834
Cr. M. & R.	Crompton, Meeson, and Roscoe's Reports, Exchequer, 2 vols., 1834—1835
Cr. & Ph.	Craig and Phillips' Reports, Chancery, 1 vol., 1840—1841
Cr. App. Rep.	Cohen's Criminal Appeal Reports, 1909—(current)
Craw. & D.	Crawford and Dix's Circuit Cases (Ireland), 3 vols., 1838—1846

Craw. & D. Abr. C. ..	Crawford and Dix's Abridged Cases (Ireland), 1 vol., 1837—1838
Cress. Insolv. Cas. ..	Cresswell's Insolvency Cases, 1 vol., 1827—1829
Cripps' Church Cas. ..	Cripps' Church and Clergy Cases, 2 parts, 1847—1850
Cro. Car.	Croke's Reports *temp.* Charles I., King's Bench and Common Pleas, 1 vol., 1625—1641
Cro. Eliz.	Croke's Reports *temp.* Elizabeth, King's Bench and Common Pleas, 1 vol., 1582—1603
Cro. Jac.	Croke's Reports *temp.* James I., King's Bench and Common Pleas, 1 vol., 1603—1625
Cru. Dig.	Cruise's Digest of the Law of Real Property, 7 vols.
Cunn.	Cunningham's Reports, King's Bench, fol., 1 vol., 1734—1735
Curt.	Curteis' Ecclesiastical Reports, 3 vols., 1834—1844
Dalr.	Dalrymple's Decisions, Court of Session (Scotland), fol., 1 vol., 1698—1720
Dan.	Daniell's Reports, Exchequer in Equity, 1 vol., 1817—1823
Dan. & Ll.	Danson and Lloyd's Mercantile Cases, 1 vol., 1828—1829
Dav. & Mer.	Davison and Merivale's Reports, Queen's Bench, 1 vol., 1843—1844
Dav. Pat. Cas.	Davies' Patent Cases, 1 vol., 1785—1816
Dav. Ir.	Davys' (or Davies' or Davy's) Reports (Ireland), 1 vol., 1604—1611
Day	Day's Election Cases, 1 vol., 1892—1893
Dea. & Sw.	Deane and Swabey's Ecclesiastical Reports, 1 vol., 1855—1857
Deac.	Deacon's Reports, Bankruptcy, 4 vols., 1834—1840
Deac. & Ch.	Deacon and Chitty's Reports, Bankruptcy, 4 vols., 1832—1835
Dears. & B.	Dearsly and Bell's Crown Cases Reserved, 1 vol., 1856—1858
Dears. C. C.	Dearsly's Crown Cases Reserved, 1 vol., 1852—1856
Deas & And.	Deas and Anderson's Decisions (Scotland), 5 vols., 1829—1832
De G.	De Gex's Reports, Bankruptcy, 1 vol., 1844—1848
De G. F. & J.	De Gex, Fisher, and Jones's Reports, Chancery, 4 vols., 1859—1862
De G. & J.	De Gex and Jones's Reports, Chancery, 4 vols., 1857—1859
De G. J. & Sm.	De Gex, Jones, and Smith's Reports, Chancery, 4 vols., 1862—1865
De G. M. & G.	De Gex, Macnaghten, and Gordon's Reports, Chancery, 8 vols., 1851—1857
De G. & Sm.	De Gex and Smale's Reports, Chancery, 5 vols., 1846—1852
Delane	Delane's Decisions, Revision Courts, 1 vol., 1832—1835
Den.	Denison's Crown Cases Reserved, 2 vols., 1844—1852
Dick.	Dickens' Reports, Chancery, 2 vols., 1559—1798
Dig.	Justinian's Digest or Pandects
Dirl.	Dirleton's Decisions, Court of Session (Scotland), fol., 1 vol., 1665—1677
Dods.	Dodson's Reports, Admiralty, 2 vols., 1811—1822
Donnelly	Donnelly's Reports, Chancery, 1 vol., 1836—1837
Doug. El. Cas.	Douglas' Election Cases, 4 vols., 1774—1776
Doug. (K. B.)	Douglas' Reports, King's Bench, 4 vols., 1778—1785
Dow	Dow's Reports, House of Lords, 6 vols., 1812—1818
Dow & Cl.	Dow and Clark's Reports, House of Lords, 2 vols., 1827—1832
Dow. & L.	Dowling and Lowndes' Practice Reports, 7 vols., 1843—1849

Dow. & Ry. (K. B.)	Dowling and Ryland's Reports, King's Bench, 9 vols., 1822—1827
Dow. & Ry. (M. C.)	Dowling and Ryland's Magistrates' Cases, 4 vols., 1822—1827
Dow. & Ry. (N. P.)	Dowling and Ryland's Reports, Nisi Prius, 1 part, 1822—1823
Dowl.	Dowling's Practice Reports, 9 vols., 1830—1841
Dowl. (N. S.)	Dowling's Practice Reports, New Series, 2 vols., 1841—1843
Dr. & Wal.	Drury and Walsh's Reports, Chancery (Ireland), 2 vols., 1837—1841
Dr. & War.	Drury and Warren's Reports, Chancery (Ireland), 4 vols., 1841—1843
Drew.	Drewry's Reports, Chancery, 4 vols., 1852—1859
Drew. & Sm.	Drewry and Smale's Reports, Chancery, 2 vols., 1859—1865
Drinkwater	Drinkwater's Reports, Common Pleas, 1 vol., 1839
Drury *temp.* Nap.	Drury's Reports *temp.* Napier, Chancery (Ireland), 1 vol., 1858—1859
Drury *temp.* Sug.	Drury's Reports *temp.* Sugden, Chancery (Ireland), 1 vol., 1841—1844
Dugd. Orig.	Dugdale's Origines Juridiciales
Dunl. (Ct. of Sess.)	Dunlop, Court of Session Cases (Scotland), 2nd series, 24 vols., 1838—1862
Dunning	Dunning's Reports, King's Bench, 1 vol., 1753—1754
Durie	Durie's Decisions, Court of Session (Scotland), fol., 1 vol., 1621—1642
Dyer	Dyer's Reports, King's Bench, 3 vols., 1513—1581
E. & B.	Ellis and Blackburn's Reports, Queen's Bench, 8 vols., 1852—1858
E. & E.	Ellis and Ellis's Reports, Queen's Bench, 3 vols., 1858—1861
E. B. & E.	Ellis, Blackburn, and Ellis's Reports, Queen's Bench, 1 vol., 1858—1860
Eag. & Y.	Eagle and Younge's Tithe Cases, 4 vols., 1223—1825
East	East's Reports, King's Bench, 16 vols., 1800—1812
East, P. C.	East's Pleas of the Crown
Ecc. & Ad.	Spinks' Ecclesiastical and Admiralty Reports, 2 vols., 1853—1855
Eden	Eden's Reports, Chancery, 2 vols., 1757—1766
Edgar	Edgar's Decisions, Court of Session (Scotland), fol., 1724—1725
Edw.	Edwards' Reports, Admiralty, 1 vol., 1808—1812
Elchies	Elchies' Decisions, Court of Session (Scotland), 2 vols., 1733—1754
Eng. Pr. Cas.	Roscoe's English Prize Cases, 2 vols., 1745—1858
Eq. Cas. Abr.	Abridgment of Cases in Equity, fol., 2 vols., 1667—1744
Eq. Rep.	Equity Reports, 3 vols., 1853—1855
Esp.	Espinasse's Reports, Nisi Prius, 6 vols., 1793—1810
Exch.	Exchequer Reports (Welsby, Hurlstone, and Gordon), 11 vols., 1847—1856
Ex. D.	Law Reports, Exchequer Division, 5 vols., 1875—1880
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Part I.—Poor Rate: Liability to the Rate.

SECT. 1.—*In General.*

1. The poor rate is leviable by taxation of every parson and vicar, and of every occupier of lands, houses, tithes impropriate, General liability.

SECT. 1. In General.

propriations of tithes (*a*), coal mines (*b*), mines of every other kind (*c*), woodlands (*d*), and sporting rights (*e*). In certain cases the owner of property is rated in place of the occupier (*f*); and, in a few instances, owners as such are rateable (*g*).

SECT. 2.—*Rateable Occupation.*

Possession or use or enjoyment capable of being beneficial.

2. Rateable occupation is the chief ground of liability to the poor rate. It is not defined by statute, nor has it been exhaustively defined by judicial decision. Legal possession is one of the elements which go to make up rateable occupation (*h*), and possession connotes physical control (*i*). There need not be actual physical occupation if there is legal possession coupled with an intention to occupy (*k*). The possession must not be merely intermittent (*l*), but it need not be permanent (*m*); and, as long as there is an intention to occupy, or to return to occupation, there may be

(*a*) As to tithe and tithe rentcharge, see p. 45, *post.*

(*b*) Poor Relief Act, 1601 (43 Eliz., c. 2), s. 1, as amended by the Poor Rate Exemption Act, 1840 (3 & 4 Vict. c. 89), s. 1 (an annual Act which has been continued annually to the present day), and the Rating Act, 1874 (37 & 38 Vict. c. 54), s. 14. The Poor Relief Act, 1601 (43 Eliz. c. 2), taxed "every inhabitant, parson, vicar and other"; the Poor Rate Exemption Act, 1840 (3 & 4 Vict. c. 89), put an end to the rating of an "inhabitant," as such, upon his property or upon the profits of stock-in-trade; but it continued the liability of the parson, vicar, and other persons named in the text.

(*c*) Rating Act, 1874 (37 & 38 Vict. c. 54), ss. 3 (3), 7. Lessors of dues payable in kind had been held rateable before the passing of that Act (*Rowls* v. *Gells* (1776), 2 Cowp. 451; *R.* v. *St Agnes* (*Inhabitants*) (1789), 3 Term Rep. 480; *R.* v. *Baptist Mill Co.* (1813), 1 M. & S. 612; *R.* v. *St. Austell* (*Inhabitants*) (1822), 5 B. & Ald. 693), which does not, therefore, apply to mines in respect of which the dues are wholly reserved in kind (Rating Act, 1874 (37 & 38 Vict. c. 54), s. 13). As to mines and mining rights generally, see title MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 497 *et seq.*; as to the assessment of mines, see pp. 42, 43, *post.*

(*d*) That is, land used for a plantation or a wood or for the growth of saleable underwoods, and not subject to any right of common (Rating Act, 1874 (37 & 38 Vict. c. 54), s. 3 (1)).

(*e*) That is, rights of fowling, shooting, taking and killing game or rabbits, and of fishing, when severed from the occupation of land (*ibid.*, s. 3 (2); *Rogers* v. *St. Germans Union* (1876), 40 J. P. 807; *Kenrick* v. *Guilsfield Overseers* (1879), 5 C. P. D. 41). The value of such rights, when not so severed, forms part of the value of the land in respect of which the occupier is rated. As to rights in respect of fishing and game, see titles FISHERIES, Vol. XIV., pp. 569 *et seq.*; GAME, Vol. XV., pp. 207 *et seq.*

(*f*) The enactments under which they are rated are referred to at pp. 19 *et seq.*, *post.*

(*g*) See pp. 17 *et seq.*, *post.*

(*h*) *R.* v. *St. Pancras Assessment Committee* (1877), 2 Q. B. D. 581; see *R.* v. *Watson* (1804), 5 East, 480.

(*i*) *Milward* v. *Caffin* (1779), 2 Wm. Bl. 1330; *Bristol Governors of the Poor* v. *Wyatt* (1834), 1 Ad. & El. 264; compare Pollock and Wright, Possession in the Common Law, pp. 15, 16, 20.

(*k*) *R.* v. *Melladew*, [1907] 1 K. B. 192, C. A., following *Staunton* v. *Powell* (1867), 15 W. R. 362; *Borwick* v. *Southwark Corporation*, [1909] 1 K. B. 78.

(*l*) *Cory* v. *Bristow* (1877), 2 App. Cas. 262, 276.

(*m*) Thus, the use of temporary structures for the accommodation of workmen during the construction of a railway may constitute rateable occupation (*Mitchell Brothers, Ltd.* v. *Worksop Union* (1904), 1 Konstam's Rating Appeals, 181; 69 J. P. 530).

SECT. 2. Rateable Occupation.

rateable occupation in an interval during which there is no user (*n*), or no profitable user (*o*), of the hereditament. At the same time, legal possession of a permanent nature with an intention to occupy is not necessarily sufficient to constitute rateable occupation, for there may be possession or bare occupation without the possibility of profit or advantage; in order to constitute rateable occupation there must be a use and enjoyment which is, or is capable of being, beneficial (*p*).

Exclusive occupation.

Occupation, in order to be rateable, must be exclusive (*q*); therefore, if more persons than one have rights in a hereditament, that person who has the right of regulation and control over the other persons enjoying subordinate rights is the rateable occupier (*r*).

Title not always material.

3. Rateability does not depend upon title (*s*), and a mere trespasser may be rateable (*t*); but evidence of title may be material, as where it is doubtful which of two persons is the rateable occupier (*u*), or whether there is any person who can be so described (*v*).

Tenants at will.

Persons in possession at will may be rateable occupiers, such as the occupants of almshouses (*a*), or of rooms in a royal palace (*b*), or companies which are allowed at will a certain use of land for commercial purposes (*c*).

(*n*) *Bootle Overseers* v. *Liverpool Warehousing Co.* (1901), 65 J. P. 740; *R.* v. *Melladew*, [1907] 1 K. B. 192, C. A.; *Borwick* v. *Southwark Corporation*, [1909] 1 K. B. 78; *Roberts* v. *Aylesbury Overseers* (1853), 1 E. & B. 423; *Williams* v. *Wednesbury Overseers* (1890) 1 Ryde's Rating Appeals, 327; and on this point see, further, p. 6, *post*.

(*o*) *Southend-on-Sea Corporation* v. *White* (1900), 65 J. P. 7; *Gage* v. *Wren* (1902), 67 J. P. 32; and on this point see, further, p. 6, *post*.

(*p*) *R.* v. *St. Luke's Hospital* (1760), 2 Burr. 1053; *Smith* v. *New Forest Union Assessment Committee* (1889), 61 L. T. 870, C. A.; *Hare* v. *Putney Overseers* (1881), 7 Q. B. D. 223, C. A.; *Liverpool Corporation* v. *Chorley Assessment Committee and Withnell Overseers*, [1912] 1 K. B. 270, C. A.

(*q*) *Cory* v. *Bristow* (1877), 2 App. Cas. 262, 276.

(*r*) *Holywell Union and Halkyn Parish* v. *Halkyn Drainage Co.*, [1895] A. C. 117, 134. Numerous cases have been decided upon the question who is the person rateable in the circumstances stated in the text, *supra*; see pp. 12—17, *post*.

(*s*) *Bute (Lord)* v. *Grindall* (1786), 1 Term Rep. 338; *R.* v. *Leith* (1852), 1 E. & B. 121, 131; *Cory* v. *Bristow* (1877), 2 App. Cas. 262, 273; *Kittow* v. *Liskeard Union* (1874), L. R. 10 Q. B. 7; *Holywell Union and Halkyn Parish* v. *Halkyn Drainage Co.*, *supra*, at pp. 121, 127. For cases where the existence of title affords some evidence of rateable occupation, see the authorities cited on p. 8, *post*, with regard to canals, towing paths, sluices and harbours.

(*t*) *Forrest* v. *Greenwich Overseers* (1858), 8 E. & B. 890, 897.

(*u*) *Holywell Union and Halkyn Parish* v. *Halkyn Drainage Co.*, *supra*; at p. 134; and for further cases upon this question, see pp. 12—17, *post*.

(*v*) *New Shoreham Harbour Commissioners* v. *Lancing* (1870), L. R. 5 Q. B. 489; *Swansea Harbour Trustees* v. *Swansea Union Assessment Committee* (1907), 1 Konstam's Rating Appeals, 250; 71 J. P. 497, H. L.; *Doncaster Union Assessment Committee* v. *Manchester, Sheffield and Lincolnshire Rail. Co.* (1894), 71 L. T. 585, H. L.; *Margate Corporation* v. *Pettman* (1912), 106 L. T. 102.

(*a*) *R.* v. *Munday* (1801), 1 East, 584; *R.* v. *Green* (1829), 9 B. & C. 203.

(*b*) *R.* v. *Ponsonby (Lady Emily)* (1842), 3 Q. B. 14; see title CONSTITUTIONAL LAW, Vol. VII., p. 121; compare *ibid.*, p. 206; and see p. 15, *post*.

(*c*) *E.g.*, a water company (*R.* v. *Chelsea Water Works Co.* (1833), 5 B.

SECT. 2. **Rateable Occupation.**

Ownership, coupled with possession and beneficial enjoyment.

4. Ownership, if accompanied by possession and enjoyment, which is, or is capable of being, beneficial, constitutes rateable occupation (*d*); but bare ownership does not (*e*), even though possession goes with it, if there is no such enjoyment by the owner (*f*). An intention on the owner's part to occupy is for this purpose equivalent to enjoyment (*g*).

Premises required to be left empty or unentered.

5. There are certain classes of hereditaments the normal use of which requires them to be kept empty, or left unentered for a time, for example, grass land (*h*), houses kept to be let furnished (*i*), seaside lodging-houses (*k*), seaside shops (*l*), warehouses kept for the business of letting floor space (*m*), exhibition buildings (*n*), part of a works kept as a stand-by (*o*), lands forming the catchment area for a waterworks undertaking (*p*). Such hereditaments are

& Ad. 156 (see p. 7, *post*); *R.* v. *East London Waterworks Co.* (1852), 18 Q. B. 705); a gas company (*R.* v. *Stevens and Anderson* (1865), 12 L. T. 491 (see p. 7, *post*)); a telegraph company (*Electric Telegraph Co.* v. *Salford Overseers* (1855), 11 Exch. 181; compare *Mitchell Brothers, Ltd.* v. *Worksop Union* (1904), 1 Konstam's Rating Appeals, 181 (see note (*m*), p. 4, *ante*)). On the other hand, it has sometimes been held that persons who had a right to use land by means of erections which might be moved at the option of the licensor were prevented by that possibility from being rateable occupiers; see *Smith* v. *Lambeth Assessment Committee* (1882), 10 Q. B. D. 327, C. A.; *Paris and New York Telegraph Co.* v. *Penzance Union* (1884), 12 Q. B. D. 552.

(*d*) *Staunton* v. *Powell* (1867), 15 W. R. 362; *Winstanley* v. *North Manchester Overseers*, [1908] 1 K. B. 836, C. A.; affirmed, [1910] A. C. 7; *Liverpool Corporation* v. *Chorley Union Assessment Committee and Withnell Overseers*, [1912] 1 K. B. 270, C. A.

(*e*) *R.* v. *St. Luke's Hospital* (1760), 2 Burr. 1053; *Smith* v. *New Forest Union Assessment Committee* (1889), 61 L. T. 870, C. A.

(*f*) Thus, empty dwelling-houses are not rated (*R.* v. *St. Pancras Assessment Committee* (1877), 2 Q. B. D. 581; *Sligo Corporation* v. *Wynne* (1873), 7 I. R. C. L. 465; *Liverpool Corporation* v. *Chorley Union Assessment Committee and Withnell Overseers, supra*), nor vacant building plots (*Smith* v. *New Forest Union Assessment Committee, supra*); and in Ireland, where the tenants had been evicted, the owner was held not to be rateable for farmhouses and farm buildings (*New Ross Union Guardians* v. *Byrne* (1892), 30 L. R. Ir. 160), or for a corn mill (*Middleton Union Guardians* v. *M'Donnell*, [1896] 2 I. R. 228).

(*g*) *Staunton* v. *Powell, supra; Borwick* v. *Southwark Corporation*, [1909] 1 K. B. 78.

(*h*) *R.* v. *Heaton* (1856), 20 J. P. 37; *Mogg* v. *Yatton Overseers* (1880), 6 Q. B. D. 10; *Pembroke* v. *Wye Overseers* (1883), 47 J. P. 359; compare *R.* v. *Buckinghamshire Justices* (1834), 3 Nev. & M. (K. B.) 68.

(*i*) *Staunton* v. *Powell, supra*, as reported 1 I. R. C. L. 182, Ex. Ch. In this case and *Gage* v. *Wren* (1902), 67 J. P. 32; *Southend-on-Sea Corporation* v. *White* (1900), 65 J. P. 7 (see notes (*k*), (*l*), *infra*), the premises were not empty, as there were chattels in all of them; but it appears from *R.* v. *Melladew*, [1907] 1 K. B. 192, C. A.; *Borwick* v. *Southwark Corporation, supra*, that the presence of chattels is not essential, if there is an intention to occupy.

(*k*) *Gage* v. *Wren, supra.*

(*l*) *Southend-on-Sea Corporation* v. *White, supra.*

(*m*) *Bootle Overseers* v. *Liverpool Warehousing Co.* (1901), 65 J. P. 740; *R.* v. *Melladew, supra.*

(*n*) *Shepherd's Bush Improvements, Ltd.* v. *Hammersmith Borough Council* (1910), 74 J. P. 280.

(*o*) *Borwick* v. *Southwark Corporation, supra.*

(*p*) *Liverpool Corporation* v. *Chorley Union Assessment Committee and Withnell Overseers, supra.*

the subject of rateable occupation, even during their periods of emptiness (*q*).

Easements and exclusive licences.

6. The mere enjoyment of an easement over land does not itself constitute rateable occupation (*r*); but a person may be the rateable occupier of land although the rights granted to him therein are only in the nature of an easement, if the exercise of such rights requires, and brings with it, the exclusive possession (*s*). Under similar conditions, the enjoyment of a licence may be such as to confer rateable occupation (*t*).

Contemporaneous rights of user.

A person may be in rateable occupation of land by means of what is called an easement, although others, including the grantor and persons deriving title from him, also have rights of user of another kind (*a*). A user of land in a certain way amounts to rateable occupation if the person so using it can prevent any other person from using it in the same way (*b*), but not if the grantor reserves a right to a similar user (*c*).

(*q*) A common of which there was an intermittent user by the National Rifle Association under a special Act was, however, held not to be the subject of rateable occupation (*Mildmay* v. *Wimbledon Overseers* (1872), 41 L. J. (M. C.) 133). See also title OPEN SPACES AND RECREATION GROUNDS, Vol. XXI., p. 581.

(*r*) *R.* v. *Trent and Mersey Navigation Co.* (1825), 4 B. & C. 57; *Doncaster Union Assessment Committee* v. *Manchester, Sheffield and Lincolnshire Rail. Co.* (1894), 71 L. T. 585, H. L. As to the characteristics of easements, see title EASEMENTS AND PROFITS À PRENDRE, Vol. XI., pp. 242, 243.

(*s*) *Doe* d. *R.* v. *York* (*Archbishop*) (1849), 14 Q. B. 81; *Talargoch Mining Co.* v. *St. Asaph Union* (1868), L. R. 3 Q. B. 478; *Southport Corporation* v. *Ormskirk Union Assessment Committee*, [1893] 2 Q. B. 468; *Holywell Union and Halkyn Parish* v. *Halkyn Drainage Co.*, [1895] A. C. 117; *Margate Corporation* v. *Pettman* (1912), 106 L. T. 102; and see title EASEMENTS AND PROFITS À PRENDRE, Vol. XI., p. 243. It is on this principle that gas and water companies are rateable for their pipes (*R.* v. *Bath Corporation* (1811), 14 East, 609; *R.* v. *Rochdale Waterworks Co.* (1813), 1 M. & S. 634; *R.* v. *Birmingham Gas-light and Coke Co.* (1823), 1 B. & C. 506; *R.* v. *Brighton Gas Light and Coke Co.* (1826), 5 B. & C. 466; *R.* v. *Chelsea Water Works Co.* (1833), 5 B. & Ad. 156; *R.* v. *West Middlesex Waterworks Co.* (1859), 1 E. & E. 716; *Liverpool Corporation* v. *Birkenhead Union* (1905), 70 J. P. 146); see p. 14, *post*. As to the rating of gas and water undertakings, see p. 35, *post*, and see, generally, titles GAS, Vol. XV., pp. 305 *et seq.*; WATER SUPPLY.

(*t*) *R.* v. *Stevens and Anderson* (1865), 12 L. T. 491; see p. 15, *post*; *Kittow* v. *Liskeard Union* (1874), L. R. 10 Q. B. 7; *Roads* v. *Trumpington Overseers* (1870), L. R. 6 Q. B. 56; *R.* v. *Whaddon* (1875), L. R. 10 Q. B. 230. The three cases last cited referred to licences to dig for various minerals; see title MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 568—570. Such a licence does not, however, constitute rateable occupation if it is not in fact exercised (*R.* v. *Fayle* (1856), 4 W. R. 460); and see the cases cited p. 13, *post*.

(*a*) *Holywell Union and Halkyn Parish* v. *Halkyn Drainage Co.*, *supra*, where the company was held rateable for a tunnel constructed by it for the purpose of mine drainage, though the owner and his lessees had the right to use the tunnel for tramways.

(*b*) Thus, user by a waggon-way (*R.* v. *Bell* (1789), 7 Term Rep. 598), by a tramway (*Pimlico Tramway Co.* v. *Greenwich* (1873), L. R. 9 Q. B. 9), or by telegraph and telephone apparatus (*Electric Telegraph Co.* v. *Salford Overseers* (1855), 11 Exch. 181; *Lancashire Telephone Co.* v. *Manchester Overseers* (1884), 14 Q. B. D. 267, C. A.), creates rateability. The tenant of

(*c*) For note (*c*), see next page.

SECT. 2. Rateable Occupation.

Land may be rateably occupied by means of moorings, if these are fixed in one place and the person rated has the exclusive right of using them (*d*), but not if the moorings are in fact constantly removed (*e*), or if they are mere accessories to a floating vessel (*f*), or if the right to use them is not exclusive (*g*).

Moorings.

Artificial watercourses and towing paths.

A canal or navigation company is in rateable occupation of a canal or an artificial cut (with the towing-path (*h*)), but not of a natural river or the towing-path alongside, unless the soil is vested in the company (*i*). A towing-path which is so vested is capable of rateable occupation, although the natural river which it adjoins is not (*k*). There may also be a rateable occupation of a sluice in a natural river (*l*).

Harbours.

Harbour commissioners are in rateable occupation of any portion of the harbour of which the soil is vested in them (*m*).

Tolls.

7. Tolls are not rateable *per se*, that is, if they are not a payment for the use of the soil (*n*). But if a person, as a necessary

a sewage farm is rateable for the whole, including the sewage carriers and works, although the lessors retain the right to inspect, alter and repair them (*Stourbridge Main Drainage Board* v. *Seisdon Union* (1902), 66 J. P. 372); and the tenant of the tolls is rateable for a swing-bridge, though the grantors have the right to open it (*Percy* v. *Hall* (1903), 67 J. P. 293).

(*c*) *R.* v. *Jolliffe* (1787), 2 Term Rep. 90; see also *Mogg* v. *Yatton Overseers* (1880), 6 Q. B. D. 10 (where, however, the rights reserved were very narrow).

(*d*) *R.* v. *Leith* (1852), 1 E. & B. 121; *Forrest* v. *Greenwich Overseers* (1858), 8 E. & B. 890; *Cory* v. *Bristow* (1877), 2 App. Cas. 262. *Grant* v. *Oxford Local Board* (1868), L. R. 4 Q. B. 9, is in conflict with these decisions, and *semble*, in view of *Cory* v. *Bristow*, *supra*, it cannot be relied on. As to the rating of ferry landing-places, see title FERRIES, Vol. XIV., p. 564.

(*e*) *R.* v. *Morrison* (1852), 1 E. & B. 150; *Manchester, Sheffield, and Lincolnshire Rail. Co.* v. *Kingston-upon-Hull Poor* (*Governor, etc.*) (1896), 60 J. P. 789, C. A.

(*f*) *Cory* v. *Greenwich* (*Churchwardens*) (1872), L. R. 7 C. P. 499.

(*g*) *Watkins* v. *Milton-next-Gravesend Overseers* (1868), L. R. 3 Q. B. 530.

(*h*) *R.* v. *Mersey and Irwell Navigation Co.* (1829), 9 B. & C. 95; *R.* v. *Thomas* (1829), 9 B. & C. 114; *Bruce* v. *Willis* (1840), 11 Ad. & El. 463.

(*i*) *R.* v. *Mersey and Irwell Navigation Co.*, *supra*; *R.* v. *Thomas*, *supra*; *R.* v. *Aire and Calder Navigation Co.* (1829), 9 B. & C. 820; *Doncaster Union Assessment Committee* v. *Manchester, Sheffield and Lincolnshire Rail. Co.* (1894), 71 L. T. 585, H. L. As to canal companies generally, see title RAILWAYS AND CANALS, Vol. XXIII., pp. 779 *et seq.* As to rights of navigation generally, see titles SHIPPING AND NAVIGATION; WATERS AND WATERCOURSES.

(*k*) *R.* v. *London Corporation* (1790), 4 Term Rep. 21.

(*l*) *R.* v. *Cardington* (*Inhabitants*) (1777), 2 Cowp. 581; but see, *contra*, *R.* v. *Aire and Calder Navigation Co.* (1832), 3 B. & Ad. 139. It is submitted that this later decision is unsound.

(*m*) *New Shoreham Harbour Commissioners* v. *Lancing* (1870), L. R. 5 Q. B. 489; *Swansea Harbour Trustees* v. *Swansea Union Assessment Committee* (1907), 1 Konstam's Rating Appeals, 250; 71 J. P. 497, H. L. (where the decision of the King's Bench Division on this point was not questioned on appeal). As to harbour authorities generally, see title WATERS AND WATERCOURSES.

(*n*) *R.* v. *Nicholson* (1810), 12 East, 330; *Williams* v. *Jones* (1810), 12 East, 346; *R.* v. *Eyre* (1810), 12 East, 416; *R.* v. *North and South Shields Ferry Co.* (1852), 1 E. & B. 140; *Lewis* v. *Swansea Overseers* (1855), 5 E. & B. 508. Tolls (so called) levied, without statutory authority, for the privilege of passing through a gate are paid for the right of using

consequence of his ownership or occupation of lands, possesses the right to take tolls and in fact takes them, he is in rateable occupation of the land (*o*). Where these conditions are fulfilled, the occupiers or occupying owners of canals, locks and sluices (*p*), harbours and docks (*q*), the landing-places of a ferry (*r*), and toll-bridges (*s*), are in rateable occupation of those hereditaments, but are not rateable in respect of any tolls or any part of the tolls not necessarily connected with the soil which they occupy, or own and occupy (*t*).

Market tolls and rights.

A person having the right to take market tolls has no rateable occupation of land (*a*), unless the tolls are paid for such privileges as of erecting stalls or of standing carts (*b*).

the land, and the occupiers are rateable for the land (*R.* v. *St. George the Martyr, Southwark* (1855), 3 W. R. 515). A "toll thorough" is not rateable (*R.* v. *Snowdon* (1833), 4 B. & Ad. 713). As to the distinction between "tolls traverse" and "tolls thorough," see title HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., p. 62.

(*o*) The cases which support this positive proposition are cited in notes (*p*)—(*s*), *infra*. Where the tolls, though received by the occupier, are not received as a necessary consequence of his occupation, they are not an element in rateable occupation (*R.* v. *Aire and Calder Navigation Co.* (1832), 3 B. & Ad. 533).

(*p*) *R.* v. *Cardington* (*Inhabitants*) (1777), 2 Cowp. 581; *R.* v. *Aire and Calder Navigation* (1788), 2 Term Rep. 660; *R.* v. *Page* (1792), 4 Term Rep. 543; *R.* v. *Staffordshire and Worcestershire Canal Navigation Co.* (1799), 8 Term Rep. 340; *R.* v. *Macdonald* (1810), 12 East, 324; *R.* v. *Lower Mitton* (*Inhabitants*) (1829), 9 B. & C. 810.

(*q*) *R.* v. *Durham* (*Earl*) (1859), 5 Jur. (N. S.) 1306; *R.* v. *Hull Dock Co.* (1845), 7 Q. B. 2; *Faversham Navigation Commissioners* v. *Faversham Union Assessment Committee* (1867), 31 J. P. 822; *New Shoreham Harbour Commissioners* v. *Lancing* (1870), L. R. 5 Q. B. 489; *R.* v. *Berwick Assessment Committee* (1885), 16 Q. B. D. 493; *Swansea Harbour Trustees* v. *Swansea Union Assessment Committee* (1907), 1 Konstam's Rating Appeals, 250; 71 J. P. 497, H. L.

(*r*) *R.* v. *North and South Shields Ferry Co.* (1852), 1 E. & B. 140; see title FERRIES, Vol. XIV., pp. 563, 564.

(*s*) *R.* v. *Barnes* (*Inhabitants*) (1830), 1 B. & Ad. 113; *R.* v. *Salisbury* (*Marquis*) (1838), 8 Ad. & El. 716; *R.* v. *Blackfriars' Bridge Co.* (1839), 9 Ad. & El. 828; *R.* v. *Hammersmith Bridge Co.* (1849), 15 Q. B. 369; *R.* v. *Bedminster Union* (1876), 1 Q. B. D. 503; *Percy* v. *Hall* (1903), 67 J. P. 293.

(*t*) *Faversham Navigation Commissioners* v. *Faversham Union Assessment Committee, supra; Ipswich Dock Commissioners* v. *St. Peter, Ipswich, Overseers* (1866), 7 B. & S. 310; *New Shoreham Harbour Commissioners* v. *Lancing, supra; Blyth Harbour Commissioners* v. *Newsham and South Blyth* (*Churchwardens*) *and Tynemouth Union Assessment Committee*, [1894] 2 Q. B. 675, C. A.; *R.* v. *Berwick Assessment Committee, supra; Swansea Harbour Trustees* v. *Swansea Union Assessment Committee, supra; R.* v. *North and South Shields Ferry Co., supra.*

(*a*) *R.* v. *Bell* (1816), 5 M. & S. 221 (where the market was held in a highway); and see *London Corporation* v. *St. Sepulchre, London, Overseers* (1871), L. R. 7 Q. B. 333, n.; *R.* v. *Casswell* (1872), L. R. 7 Q. B. 328; *Horner* v. *Stepney Assessment Committee* (1908), 2 Konstam's Rating Appeals, 743; 72 J. P. 262 (where the market was held in an inclosed space). The three cases last cited as to inclosed markets are somewhat difficult to reconcile with those cited in note (*b*), *infra*. As to market tolls and stallages generally, see title MARKETS AND FAIRS, Vol. XX., pp. 35 *et seq.*

(*b*) If the tolls are of the nature of stallage tolls, he is rateable (*R.* v. *St.*

SECT. 2. Rateable Occupation.

Lighthouse tolls are not rateable (*c*).

Rights of common.

8. A right of common is not itself a rateable subject-matter (*d*); but the exercise of such a right over land may bring with it such an exclusive enjoyment of the land as to constitute rateable occupation (*e*). If the persons who feed cattle on the land in the exercise of the right are tenants in common for the whole year, they are rateable (*f*); if the rights of common are vested in trustees to manage and to receive moneys paid for the grazing during part of the year the trustees are rateable (*g*); but a municipal corporation which manages a common on behalf of the freemen is not rateable for the common (*h*).

Occupation by servant or agent.

9. Where hereditaments are occupied by means of a servant or agent, the rateable occupation, if any, is in the employer (*i*); but a

Peter of Mancroft, Norwich, Overseers (1828), 6 L. J. (O. S.) (M. C.) 69; *Roberts* v. *Aylesbury Overseers* (1853), 1 E. & B. 423; *R.* v. *Barnard Castle* (*Inhabitants*) (1863), 27 J. P. 534), even though his occupation is intermittent (*Williams* v. *Wednesbury Overseers* (1890), Ryde's Rating Appeals, 327; but a stall-keeper who is not entitled to a stall on the same spot throughout the year is not rateable (*Spear* v. *Bodmin Union Guardians* (1880), 49 L. J. (M. C.) 69). The above cases refer to markets held in highways. The same principle has been applied to inclosed markets in the following cases (but see note (*a*), p. 9, *ante*):—*Percy* v. *Ashford Union* (1876), 34 L. T. 579; *Bedford* (*Duke*) v. *St. Paul, Covent Garden, Overseers* (1881), 51 L. J. (M. C.) 41; *London Corporation* v. *Greenwich Union Assessment Committee* (1883), 48 L. T. 437.

(*c*) *R.* v. *Rebowe* (1772), Cald. Mag. Cas. 155, 351; *R.* v. *Tynemouth* (*Inhabitants*) (1810), 12 East, 46; *R.* v. *Coke* (1826), 5 B. & C. 797; *R.* v. *Fowke* (1826), 5 B. & C. 814, n. But there may be a rateable occupation of a lighthouse; see *Lancaster Port Commissioners* v. *Barrow-in-Furness Overseers*, [1897] 1 Q. B. 166; and see p. 23, *post*.

(*d*) *Kempe* v. *Spence* (1779), 2 Wm. Bl. 1244; *R.* v. *Churchill* (1825), 4 B. & C. 750; *R.* v. *Alnwick* (*Chamberlains, etc.*) (1839), 9 Ad. & El. 444. As to the different kinds of rights of common, see title COMMONS AND RIGHTS OF COMMON, Vol. IV., pp. 446 *et seq.*; and as to exclusive rights of pasture and of foldage, see *ibid.*, pp. 461—464.

(*e*) *R.* v. *Aberavon* (*Inhabitants*) (1804), 5 East, 453.

(*f*) *R.* v. *Watson* (1804), 5 East, 480; compare *R.* v. *Sudbury Corporation* (1823), 1 B. & C. 389.

(*g*) *R.* v. *Tewkesbury* (*Burgesses' Trustees*) (1810), 13 East, 155. Similar decisions were given where the trustees were a municipal corporation (*R.* v. *Sudbury Corporation, supra*; *R.* v. *York Corporation* (1837), 6 Ad. & El. 419); but the status of a corporation having been changed by the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76) (now repealed), the two cases last cited apparently no longer apply to municipal corporations (*Lincoln Corporation* v. *Holmes Common* (1867), L. R. 2 Q. B. 482); see also *Trenfield* v. *Lowe* (1869), L. R. 4 C. P. 454; and compare title ELECTIONS, Vol. XII., p. 147.

(*h*) So held on the ground that the *profit à prendre* belonging to the freemen exhausted the whole value of the land (*Lincoln Corporation* v. *Holmes Common, supra*). If the principle of this decision is good law, it appears to overrule not only *R.* v. *Sudbury Corporation, supra*, and *R.* v. *York Corporation, supra*, but also *R.* v. *Tewkesbury* (*Burgesses' Trustees*), *supra*. But it is doubtful how far this principle can be reconciled with those laid down in *Mersey Docks* v. *Cameron, Jones* v. *Mersey Docks* (1865), 11 H. L. Cas. 443, and *London County Council* v. *Erith* (*Churchwardens*) *and Dartford Union Assessment Committee*, [1893] A. C. 562; and see p. 16, *post*.

(*i*) *Yates* v. *Chorlton-upon-Medlock Union* (1883), 47 J. P. 630 (dwelling-house occupied by means of a caretaker); *R.* v. *Field* (1794), 5 Term Rep. 587 (school occupied by means of a matron); *R.* v. *Tynemouth*

servant or agent occupying a separately rateable hereditament, although he does so by virtue of his employment, may be the rateable occupier (*k*).

Occupation by caretaker.

A mere caretaker cannot himself be a rateable occupier (*l*); but the caretaker's employer may, in some cases at least, have a rateable occupation by the caretaker (*m*), but the usual practice is not to rate such an employer. Where the owner of a house employs a caretaker to do other work by residing there, in addition to taking care of the house, the owner may be rateable (*n*). Where the hereditament consists of parts capable of separately rateable occupation, the residence of a caretaker in one such part does not make his employer the rateable occupier of the whole (*o*).

Occupation by bankrupt.

10. A bankrupt may be in rateable occupation although he holds indirectly of the trustee in bankruptcy (*p*).

Occupation by liquidators.

In a winding-up, liquidators who carry on the business of the company continue the rateable occupation of the company's premises (*q*); and they are in rateable occupation even if they occupy merely for the purpose of fulfilling outstanding contracts (*r*), or of preventing damage to the company's property (*s*).

Occupation by receiver.

Where a receiver is appointed under a deed of floating charge, and the company is not directed to deliver up possession of land to him, the receiver has no rateable occupation of the company's land (*t*); but a receiver appointed under the terms of a deed by which the company is to give up possession at a certain date is in rateable occupation after the date when possession is given up (*a*).

(*Inhabitants*) (1810), 12 East, 46 (lighthouse occupied by means of a lightkeeper); and see cases cited on pp. 14, 15, *post*.

(*k*) *R.* v. *Catt* (1795), 6 Term Rep. 332; *R.* v. *Lynn* (1838), 8 Ad. & El. 379; *Smith* v. *Seghill* (1875), L. R. 10 Q. B. 422; and see the cases cited in connection with the occupation by the Crown on pp. 14, 15, *post*; see also titles ELECTIONS, Vol. XII., pp. 172 *et seq.*; INHABITED HOUSE DUTY, Vol. XIII., pp. 189, 190; LANDLORD AND TENANT, Vol. XVIII., p. 340; MASTER AND SERVANT, Vol. XX., pp. 69, 70.

(*l*) *Yates* v. *Chorlton-upon-Medlock Union*, *supra*; *R.* v. *Simmons* (1893), 2 Ryde's Rating Appeals, 316; and see title DISTRESS, Vol. XI., p. 214. As to premises necessarily left empty, see p. 6, *ante*.

(*m*) *Hicks* v. *Dunstable Overseers* (1883), 48 J. P. 326. Where the employer also leaves furniture in the house, that is an additional reason for his being rated (*Bursledon* v. *Clarke* (1897), 61 J. P. 261).

(*n*) *Bertie* v. *Walthamstow Overseers* (1904), 68 J. P. 545.

(*o*) *Langford* v. *Cole* (1910), 74 J. P. 229.

(*p*) Compare *Re Thomas, Ex parte Ystradyfodwg Local Board* (1887), 57 L. J. (Q. B.) 39 (a case decided in connection with the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (3)); see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 217; and see p. 68, *post*.

(*q*) *Re Wearmouth Crown Glass Co.* (1882), 19 Ch. D. 640; and see titles COMPANIES, Vol. V., p. 537, note (*e*); DISTRESS, Vol. XI., p. 173.

(*r*) *Re National Arms and Ammunition Co.* (1885), 28 Ch. D. 474, C. A.; compare *Re International Marine Hydropathic Co.* (1884), 28 Ch. D. 470.

(*s*) *Re Blazer Fire Lighter, Ltd.*, [1895] 1 Ch. 402.

(*t*) The occupation remains in the company (*Re Marriage, Neave & Co., North of England Trustee, Debenture and Assets Corporation* v. *Marriage, Neave & Co.*, [1896] 2 Ch. 663, C. A.).

(*a*) *Richards* v. *Kidderminster Overseers*, *Richards* v. *Kidderminster*

SECT. 2. **Rateable Occupation.**

Hereditaments separately let.

11. A hereditament which is capable of being separately let may be separately rated (*b*); but a hereditament which is physically undivided, and is actually occupied by a single occupier, may be rateable as a whole, although parts of it are capable of separate letting (*c*): it is not, however, necessarily so rateable (*d*). Flats, in the modern acceptation of the term, which are occupied by separate tenants are separately rateable (*e*).

Flats.

Single building with two or more occupiers.

A single building may have two or more occupiers who are separately rateable, although there is no structural severance between the portions of the building occupied by each of those persons (*f*). But a person cannot divest himself of the rateable occupation of a whole building by merely permitting other persons to use some part of it, or by shutting up a part (*g*).

Joint occupation of single hereditament.

12. Several persons, as in the case of partners, may be in joint occupation of a single hereditament and liable for rates in respect of the whole (*h*).

Separate use of property by several persons.

13. Where property is used separately by more persons than one, the question which of such persons is the rateable occupier of any particular portion of the property is answered by ascertaining which of those persons has the control of the portion in question during the continuance of the user (*i*). Thus, a tenant of a flat is the rateable occupier of it because he is not subject to the landlord's

Corporation, [1896] 2 Ch. 212; see *Re Marriage, Neave & Co., North of England Trustee, Debenture and Assets Corporation* v. *Marriage, Neave & Co.*, [1896] 2 Ch. 663, C. A., *per* RIGBY, L.J., at p. 678. As to the duty of a receiver to pay rates, see title RECEIVERS, pp. 401, 402, *post.*

(*b*) *Mersey Docks and Harbour Board* v. *Birkenhead Overseers* (1873), L. R. 8 Q. B. 445. There is no statutory definition of a rateable hereditament. As to the effect of the control of a portion of property in making that portion a separately rateable hereditament, see the text, *infra.*

(*c*) *Rawlence* v. *Hursley Union Guardians* (1877), 3 Ex. D. 44. In *North Eastern Railway* v. *York Union*, [1900] 1 Q. B. 733, where a similar decision was given, the parts were not capable of separate letting without some physical alteration.

(*d*) *Langford* v. *Cole* (1910), 74 J. P. 229; see p. 6, *ante.*

(*e*) *R.* v. *St. George's Union* (1871), L. R. 7 Q. B. 90; see *Allchurch* v. *Hendon Union Assessment Committee and Guardians*, [1891] 2 Q. B. 436, C. A.; title ELECTIONS, Vol. XII., p. 168; and see the text, *infra.*

(*f*) *Allchurch* v. *Hendon Union Assessment Committee and Guardians*, *supra* (where each of the two storeys of a house was let to a separate tenant, and the tenants had the joint use of the yard, closet and cistern); see *R.* v. *St. George's Union*, *supra.*

(*g*) *R.* v. *St. Mary the Less, Durham* (*Inhabitants*) (1791), 4 Term Rep. 477; *R.* v. *Aberystwith* (*Inhabitants*) (1808), 10 East, 354. These cases, however, are scarcely reconcilable with the more modern decisions cited in note (*e*), *supra*; compare *R.* v. *Smith* (1860), 30 L. J. (M. C.) 74, cited in note (*m*), p. 13, *post.* Permission by the Crown to use part of a building belonging to it may make the person so permitted a rateable occupier (*R.* v. *Ponsonby* (*Lady Emily*) (1842), 3 Q. B. 14; and see note (*b*), p. 5, *ante*).

(*h*) *R.* v. *Paynter* (1845), 7 Q. B. 255. But if the several persons are in fact separately rateable they are not liable for the rates on the whole hereditament if it has been incorrectly rated as a single hereditament (*R.* v. *London Justices*, [1899] 1 Q. B. 532, 539).

(*i*) If the person using a portion is the rateable occupier of that portion, it is a separately rateable hereditament. If not, the property is rateable as a whole; see title ELECTIONS, Vol. XII., p. 168: and see the text, *supra.*

control (*k*); but a lodger (*l*) or a person allowed the use of offices (*m*) is not, if he is subject to such control, the rateable occupier of the lodgings or offices. Similar considerations apply to parts of industrial undertakings appropriated to the use of persons conducting subsidiary enterprises (*n*). The agreement which allows the separate user may contain words of demise, but it does not necessarily follow that the grantor has transferred to the grantee the rateable occupation (*o*); and the grantee may be the rateable occupier, although no such words appear in the agreement (*p*).

Power of exclusion.

A person who enjoys the use of the portion in question, and can exclude from that portion the person who has allowed him the use, is the rateable occupier (*q*).

Railway running powers.

Where one railway company has running powers (*r*) over a line owned by another company, the rateable occupation is in the company which exercises control over the general management of the line; and an obligation to do repairs is strong evidence of occupation (*s*).

(*k*) *R.* v. *St. George's Union* (1871), L. R. 7 Q. B. 90.

(*l*) *Bradley* v. *Baylis* (1881), 8 Q. B. D. 195, C. A.; and see title ELECTIONS, Vol. XII., pp. 168, 169.

(*m*) *R.* v. *Smith* (1860), 30 L. J. (M. C.) 74; and see p. 12, *ante*.

(*n*) *E.g.*, portions of dock undertakings appropriated to shippers (*Allan* v. *Liverpool, Inman* v. *Kirkdale* (1874), L. R. 9 Q. B. 180), or to a canal company (*Rochdale Canal Co.* v. *Brewster*, [1894] 2 Q. B. 852, C. A.). In these two cases the dock board retained the control, and the persons using were held not rateable; but where the board appropriated a portion to a firm of wine merchants, for use as bonded stores, the latter were held to have such control as to be rateable (*Young & Co.* v. *Liverpool Assessment Committee*, [1911] 2 K. B. 195). In the cases of the following properties the persons allowing the use retained control of the whole and were the rateable occupiers:—a portion of an exhibition appropriated to a caterer (*R.* v. *Morrish* (1863), 32 L. J. (M. C.) 245); portions of railway premises appropriated to coal merchants (*London and North Western Rail. Co.* v. *Buckmaster* (1875), L. R. 10 Q. B. 70, 444, Ex. Ch.; *London and Blackwall Rail. Co.* v. *All Saints, Poplar (Churchwardens, etc.)* (1867), 31 J. P. 102), or bookstall keepers (*Smith* v. *Lambeth Assessment Committee* (1882), 10 Q. B. D. 327, C. A.); part of a set of telegraph wires appropriated by the Postmaster-General to the use of a private company (*Paris and New York Telegraph Co.* v. *Penzance Union* (1884), 12 Q. B. D. 552); portions of electric cables and equipment appropriated to the use of a tramways company (*New St. Helens Tramways Co.* v. *Prescot Union* (1904), 1 Konstam's Rating Appeals, 150); portions of a cemetery in which the cemetery company had sold exclusive rights of burial (*R.* v. *St. Mary Abbotts, Kensington (Inhabitants)* (1840), 12 Ad. & El. 824), or which it had sold for graves (*R.* v. *Abney Park Cemetery Co.* (1873), L. R. 8 Q. B. 515); see also *Watkins* v. *Milton-next-Gravesend Overseers* (1868) L. R. 3 Q. B. 350.

(*o*) *Allan* v. *Liverpool, Inman* v. *Kirkdale, supra; Rochdale Canal Co.* v. *Brewster, supra.*

(*p*) *R.* v. *Stevens and Anderson* (1865), 12 L. T. 491; and see p. 7, *ante*.

(*q*) *Young & Co.* v. *Liverpool Assessment Committee, supra.*

(*r*) As to such powers, see title RAILWAYS AND CANALS, Vol. XXIII., pp. 701 *et seq.*

(*s*) *Leeds, Bradford and Halifax Rail. Co.* v. *Armley (Township) Overseers* (1861), 25 J. P. 711; *R.* v. *Sherard (Lord)* (1863), 33 L. J. (M. C.) 5; *North and South Western Junction Rail. Co.* v. *Brentford Union Assessment Committee* (1887), 18 Q. B. D. 740, C. A.; *Sutton Harbour Improvement Co.* v. *Plymouth Guardians* (1890), 63 L. T. 772. The same principles underlie the

SECT. 2. Rateable Occupation.

Crown property.

Property occupied by public administration.

14. The Crown is not rateable for the relief of the poor (*t*), and consequently no rate can be imposed in respect of hereditaments occupied by the Crown, or by the servants of the Crown for the purposes of the Crown (*u*). Occupation by the great departments of State is therefore not a rateable occupation (*a*). The rule extends also to property occupied by persons whose subordination to the Crown is less direct, such as police quarters and offices (*b*), county buildings used for assize courts (*c*) or for county courts (*d*), gaols (*e*), and premises used exclusively for purposes of the Territorial Force (*f*).

decision on very peculiar facts in *Midland Rail. Co.* v. *Badgworth Overseers* (1864), 34 L. J. (M. C.) 25; and as to gas or water pipes owned by one authority, but solely supplying another, see *London and North Western Rail. Co.* v. *Giles* (1869), 33 J. P. 776, and compare *Liverpool Corporation* v. *Birkenhead Union* (1906), 70 J. P. 146; *Southport Corporation* v. *Ormskirk Union Assessment Committee*, [1894] 1 Q. B. 196, C. A.

(*t*) Because the Crown is not mentioned in the Poor Relief Act, 1601 (43 Eliz. c. 2), which imposes the poor rate.

(*u*) *Mersey Docks* v. *Cameron, Jones* v. *Mersey Docks* (1865), 11 H. L. Cas. 443, *per* BLACKBURN, J., at p. 463; *Leith Harbour and Docks Commissioners* v. *Inspector of the Poor* (1866), L. R. 1 Sc. & Div. 17; and see title CONSTITUTIONAL LAW, Vol. VII., pp. 118 *et seq.* The Crown, however, in practice pays a contribution in lieu of rates, and rates are levied in respect of Crown private estates; see title CONSTITUTIONAL LAW, Vol. VII., pp. 276, 277; and see p. 48, *post.*

(*a*) As by the Post Office (*Smith* v. *Birmingham Guardians* (1857), 7 E. & B. 483); see title POST OFFICE, Vol. XXII., p. 645; the War Office (*Amherst (Lord)* v. *Sommers (Lord)* (1788), 2 Term Rep. 372; *R.* v. *Stewart* (1857), 8 E. & B. 360; *R.* v. *Stainsby* (1857), 8 E. & B. 370; *R.* v. *Breton* (1857), 8 E. & B. 375; *R.* v. *Foster* (1857), 8 E. & B. 380); the Admiralty (*Cameron* v. *Mersey Docks, Jones* v. *Mersey Docks, supra*); and see title CONSTITUTIONAL LAW, Vol. VII., pp. 119, 121.

(*b*) *Lancashire Justices* v. *Stretford Overseers* (1858), E. B. & E. 225; *R.* v. *St. Martin's, Leicester* (1867), L. R. 2 Q. B. 493; *Cross* v. *West Derby Union* (1899), 16 T. L. R. 120. A police officer is, however, rateable for quarters which are in his personal occupation; see p. 15, *post.*

(*c*) *R.* v. *Worcestershire Justices* (1839), 11 Ad. & El. 57; *Coomber* v. *Berkshire Justices* (1883), 9 App. Cas. 61; see *Nicholson* v. *Holborn Union Assessment Committee* (1886), 18 Q. B. D. 161. But county buildings, so far as they are used for other than judicial business, are the subject of rateable occupation (*Middlesex County Council* v. *St. George's Union Assessment Committee*, [1897] 1 Q. B. 64, C. A.; *Worcestershire County Council* v. *Worcester Union*, [1897] 1 Q. B. 480, C. A.), although county buildings used for Judge's Lodgings are not rateably occupied (*Hodgson* v. *Carlisle Local Board of Health* (1857), 8 E. & B. 116; see title CONSTITUTIONAL LAW, Vol. VII., p. 120). As to county buildings, see also *Lancashire Justices* v. *Cheetham* (1867), L. R. 3 Q. B. 14; and see, generally, title LOCAL GOVERNMENT, Vol. XIX., pp. 363 *et seq.*

(*d*) *R.* v. *Manchester Overseers* (1854), 3 E. & B. 336.

(*e*) *R.* v. *Shepherd* (1841), 1 Q. B. 170; *Bedfordshire Justices* v. *St. Paul, Bedford, Overseers* (1852), 7 Exch. 650; *Gambier* v. *Lydford Overseers* (1854), 3 E. & B. 346; *R.* v. *Manchester Overseers, supra.* Prison officers may, however, in certain circumstances, have a rateable occupation of their quarters; see p. 15, *post.* As to the classification of prisons, see title PRISONS, Vol. XXIII., p. 235.

(*f*) *Wixon* v. *Thomas* (No. 2), [1912] 1 K. B. 690, C. A. Militia premises were exempt (*R.* v. *Fuller* (1855), 8 E. & B. 365, n.; *R.* v. *Jay* (1857), 8 E. & B. 469), and volunteer storehouses were exempted by the Volunteer Act, 1863 (26 & 27 Vict. c. 65), s. 26; but no property used exclusively for volunteer purposes was rateable (*Pearson* v. *Holborn Union Assessment Committee*, [1893] 1 Q. B. 389; see title CONSTITUTIONAL LAW, Vol. VII., p. 120).

SECT. 2. Rateable Occupation.

Under some circumstances, however, an officer of the army (*g*), of a prison (*h*), or of a police force (*i*), may be regarded as being himself the occupier of his quarters, and as therefore having a rateable occupation of them, although if the Crown were the occupier there would be no rateable occupation (*k*).

Property occupied by public officer in personal capacity.

If the Crown permits a person to occupy part of its property that person may be rateable (*l*); and if premises are used by a servant of the Crown for Crown purposes, but such servant has not the exclusive occupation, the actual occupier is rateable (*m*).

Private occupation of Crown property.

The occupation by the Commissioners of Woods and Forests (*n*) or Public Works (*o*) of property maintained out of public money is not rateable (*p*).

Property maintained out of public money.

The use of such property for entertainments might, however, make the occupation rateable (*Rayner* v. *Drewitt* (1900), 64 J. P. 567; *Lewis* v. *Durham Union* (1904), Ryde and Konstam's Rating Appeals, 357; 68 J. P. 220); and see, generally, title ROYAL FORCES.

(*g*) *R.* v. *Hurdis* (1789), 3 Term Rep. 497.

(*h*) Quarters outside a prison and quarters inside, so far as they exceeded what was necessary, were held rateable in *Gambier* v. *Lydford Overseers* (1854), 3 E. & B. 346.

(*i*) *Martin* v. *West Derby Assessment Committee* (1883), 11 Q. B. D. 145, C. A.; *Showers* v. *Chelmsford Union Assessment Committee*, [1891] 1 Q. B. 339, C. A. In both these cases the quarters were some distance away from the police offices and cells. But in *Monmouth Overseers* v. *Monmouthshire County Council* (1902), 66 J. P. 788, quarters adjoining a cell were held to be in rateable occupation; see also *R.* v. *Bridgehouse* (1869), 20 L. T. 658; *MacHarg* v. *Stoke-upon-Trent Assessment Committee* (1884), 48 J. P. 775.

(*k*) See the cases cited on p. 14, *ante*. It is difficult, upon the cases, to state a more definite rule than appears in the text, *supra*. For instance, the fact that the chief constable was bound to reside where he did, did not prevent him from being rateable in *Showers* v. *Chelmsford Union Assessment Committee*, *supra*. But such a condition may probably at the present day be held sufficient to destroy rateability; see *Cross* v. *West Derby Union* (1899), 16 T. L. R. 120 (see note (*b*), p. 14, *ante*); *Wixon* v. *Thomas*, *Lambert* v. *Thomas*, *Burrows* v. *Thomas* (No. 2), [1912] 1 K. B. 690, C. A. (see p. 14, *ante*). The residence of the officer's wife and family with him does not suffice to make him rateable (*Leicester County Council* v. *Leicester Parish Assessment Committee* (1898), 78 L. T. 463); compare *R.* v. *Stewart* (1857), 8 E. & B. 360.

(*l*) *R.* v. *Ponsonby* (*Lady Emily*) (1842), 3 Q. B. 14. Where the site of a royal palace is demised to a subject for a permanent interest, the occupier is rateable (*Portland's* (*Duke*) *Case* (1760), 1 Bott's Poor Laws by Const, 131; and see *Bute* (*Earl*) v. *Grindall* (1793), 2 Hy. Bl. 265, as to the ranger of a royal park). The Crown's tenants "in ancient demesne" are rateable (*R.* v. *Aylesford* (*Inhabitants*) (1860), 29 L. J. (M. C.) 83); and see title CONSTITUTIONAL LAW, Vol. VII., p. 121; *Bute* (*Earl*) v. *Grindall* (1793), 2 Hy. Bl. 265.

(*m*) *R.* v. *Smith* (1860), 30 L. J. (M. C.) 74.

(*n*) *De la Bèche* v. *St. James, Westminster, Vestrymen* (1855), 4 E. & B. 385.

(*o*) *R.* v. *McCann* (1868), L. R. 3 Q. B. 141.

(*p*) On the same principle, the Royal Academy were held not rateable for a part of the National Gallery appropriated to them (*R.* v. *Shee* (1843), 4 Q. B. 2); but a school supported by the Committee of Council on Education out of money voted by Parliament was held rateable (*R.* v. *Temple* (1853), 2 E. & B. 160; followed in *R.* v. *Kneller Hall* (*Trustees*) (1858), 6 W. R. 605). As to schools, see, however, pp. 16, 22, 23, *post*; *Hornsey School of Art* v. *Edmonton Union* (1905), 2 Konstam's Rating Appeals, 393; 94 L. T. 203; *R.* v. *Chelsea Water Works Co.* (1833), 5 B. & Ad. 156; *R.* v. *Stevens and Anderson* (1865), 12 L. T. 491; p. 7, *ante*.

SECT. 2. Rateable Occupation.

Premises acquired for telegraph purposes are, to a certain extent, rateable (*q*).

Telegraph premises.

The occupation of reformatory and industrial schools is generally rateable (*r*).

Reformatories.

A university has a rateable occupation of its premises though created by charter from the Crown (*s*).

Universities.

Property occupied for public purposes.

15. The occupation of property for public purposes other than those of the general administration of the country is rateable (*t*), although no pecuniary profit results therefrom to the occupier (*a*). A harbour board is rateable for its docks, even though its profits must by statute be devoted to the purposes of the trust (*b*); an education authority is rateable for its schools (*c*); a county council or sewerage authority is rateable for its outfall works (*d*), its sewage farm (*e*), and the adjuncts to the works or farm (*f*), as well as for its sewers, whether above ground (*g*) or underground (*h*); guardians

(*q*) Telegraph Act, 1868 (31 & 32 Vict. c. 110), s. 22. The premises are rateable subject to the same limitations of value even when let to a tenant (*St. Gabriel, Fenchurch, Overseers* v. *Williams* (1885), 16 Q. B. D. 649; see also *R.* v. *Postmaster-General* (1873), 28 L. T. 337).

(*r*) *R.* v. *West Derby* (1875), L. R. 10 Q. B. 283; *Tunnicliffe* v. *Birkdale Overseers* (1888), 20 Q. B. D. 450, C. A.; *Durham County Council* v. *Chester-le-Street Assessment Committee and Witton Gilbert (Churchwardens)*, [1891] 1 Q. B. 330. These decisions appear, however, to conflict with the general rules laid down in *Mersey Docks* v. *Cameron, Jones* v. *Mersey Docks* (1865), 11 H. L. Cas. 443; *Coomber* v. *Berkshire Justices* (1883), 9 App. Cas. 61. As to reformatory and industrial schools generally, see title EDUCATION, Vol. XII., pp. 70 *et seq.*

(*s*) *Greig* v. *Edinburgh University* (1868), L. R. 1 Sc. & Div. 348. As to universities generally, see title EDUCATION, Vol. XII., pp. 90 *et seq.*

(*t*) *Mersey Docks* v. *Cameron, Jones* v. *Mersey Docks, supra;* compare *Leith Harbour and Docks Commissioners* v. *Inspector of the Poor* (1866), L. R. 1 Sc. & Div. 17.

(*a*) *R.* v. *London School Board* (1886), 17 Q. B. D. 738, C. A.; *Burton-upon-Trent Corporation* v. *Burton-upon-Trent Union Assessment Committee, Same* v. *Eggington (Churchwardens) and Burton-upon-Trent Union Assessment Committee* (1889), 24 Q. B. D. 197, C. A.; *London County Council* v. *Erith (Churchwardens) and Dartford Union Assessment Committee*, [1893] A. C. 562.

(*b*) *Mersey Docks* v. *Cameron, Jones* v. *Mersey Docks, supra;* and, as to harbour authorities generally, see title WATERS AND WATERCOURSES.

(*c*) *West Bromwich School Board* v. *West Bromwich Overseers* (1884), 13 Q. B. D. 929; *R.* v. *London School Board, supra;* and, as to education authorities generally, see title EDUCATION, Vol. XII., pp. 17 *et seq.*

(*d*) *London County Council* v. *Erith (Churchwardens) and Dartford Union Assessment Committee, supra;* and as to sewerage authorities generally, see title SEWERS AND DRAINS.

(*e*) *Burton-upon-Trent Corporation* v. *Burton-upon-Trent Union Assessment Committee, Same* v. *Eggington (Churchwardens) and Burton-upon-Trent Union Assessment Committee, supra.*

(*f*) *Leicester Corporation* v. *Beaumont Leys Overseers* (1894), Ryde and Konstam's Rating Appeals, 140; 70 L. T. 659.

(*g*) *London County Council* v. *Erith (Churchwardens) and Dartford Union Assessment Committee, supra.*

(*h*) *Ystradyfodwg and Pontypridd Main Sewerage Board* v. *Newport Assessment Committee*, [1901] 1 K. B. 406, C. A.; *West Kent Main Sewerage Board* v. *Dartford Union*, [1911] A. C. 171. According to *London County Council* v. *Erith (Churchwardens) and Dartford Union Assessment Committee, supra; Ystradyfodwg and Pontypridd Main Sewerage Board* v. *Newport*

are rateable for their workhouses (*i*); the governors of a hospital are rateable for it (*k*).

SECT. 2. Rateable Occupation.

16. Where, although property is vested in a local authority, that authority could have discharged its public duty without acquiring the property and merely exercises statutory powers of conservancy over it, the public may be the only occupiers, as in the case of a toll-free bridge (*l*), or a public park (*m*), and in such cases there is no rateable occupation. Even if the authority derives from the property some small revenue insufficient to cover the cost of upkeep, the property is not thereby made rateable (*m*); but there is a rateable occupation of the hereditament if it is used for purposes other than, and not subsidiary to, the exercise of the rights of the public (*n*).

Property vested in local authority subject to exercise of rights of the public.

17. Rates cannot be recovered from ambassadors and their servants in respect of houses occupied by them (*o*).

Ambassadors.

SECT. 3.—*Special Cases in which Owners are Liable as such.*

18. Parsons and vicars are rateable in respect of the tithes received by them (*p*), and lay impropriators, as well as spiritual

Tithe-owners.

Assessment Committee, [1901] 1 K. B. 406, C. A., underground sewers, to the expenses of which no contribution was made by any person or body other than the owning authority, were not rateable; but *West Kent Main Sewerage Board* v. *Dartford Union Assessment Committee*, [1911] A. C. 71, has swept away this distinction and shows that sewers generally are rateable.

(*i*) *Bristol* (*Governors of Poor*) v. *Wait* (1836), 5 Ad. & El. 1; *R.* v. *Wallingford Union Guardians* (1839), 10 Ad. & El. 259; and as to workhouses generally, see title POOR LAW, Vol. XXII., pp. 555 *et seq.*

(*k*) *St. Thomas' Hospital* (*Governors*) v. *Stratton* (1875), L. R. 7 H. L. 477.

(*l*) *Hare* v. *Putney Overseers* (1881), 7 Q. B. D. 223, C. A.

(*m*) *Lambeth Overseers* v. *London County Council*, [1897] A. C. 625; followed in *Manchester Corporation* v. *Chorlton Union Assessment Committee* (1899), 15 T. L. R. 327; *Liverpool Corporation* v. *West Derby Assessment Committee*, [1908] 2 K. B. 647, C. A. The principles stated in the text, *supra*, underlie, it is submitted, the distinction between the decisions in *Lambeth Overseers* v. *London County Council*, *supra*, and *London County Council* v. *Erith* (*Churchwardens*) *and Dartford Union Assessment Committee*, [1893] A. C. 562.

(*n*) *Sir John Soane's Museum* (*Trustees*) v. *St. Giles-in-the-Fields and St. George's, Bloomsbury* (1900), Ryde and Konstam's Rating Appeals, 235.

(*o*) Diplomatic Privileges Act, 1708 (7 Anne, c. 12); *Parkinson* v. *Potter* (1885), 16 Q. B. D. 152; see title CONSTITUTIONAL LAW, Vol. VI., p. 430, note (*f*). This applies even to a British subject who is a member of a foreign embassy (*Macartney* v. *Garbutt* (1890), 24 Q. B. D. 368). A consul, however, is rateable (*Viveash* v. *Becker* (1814), 3 M. & S. 284; see title CONSTITUTIONAL LAW, Vol. VI., p. 438); and so is a British subject who, though an ambassador's servant, occupies a house for purposes not connected with that service (*Novello* v. *Toogood* (1823), 1 B. & C. 554; see title CONSTITUTIONAL LAW, Vol. VI., pp. 432, 433; and see p. 11, *ante*).

(*p*) As "inhabitants" (Poor Relief Act, 1601 (43 Eliz. c. 2), s. 1; Poor Rate Exemption Act, 1840 (3 & 4 Vict. c. 89), s. 1; *R.* v. *Bartlett* (1708), 1 Bott's Poor Laws by Const, 127; *R.* v. *Turner* (1718), 1 Bott's Poor Laws by Const, 126; compare *Chanter* v. *Glubb* (1829), 9 B. & C. 479); see also the cases cited p. 18, *post*; and see title ECCLESIASTICAL LAW, Vol. XI., pp. 749, 750. In *R.* v. *Lambeth* (*Inhabitants*) (1722), 1 Stra. 525, and *R.* v. *Wilson* (1835), 5 Nev. & M. (K. B.) 119, lessees of tithes were held rate-

SECT. 3. Special Cases in which Owners are Liable as such.

corporations to which tithes are appropriated, are also so rateable (*q*). The rateability extends to tithe commutation rentcharges (*r*), and any other rent or rentcharge substituted for tithes (*s*), unless it is specifically declared not to be rateable by the document which effects the substitution (*t*). A payment resembling tithe, but not created in substitution for tithe, is not rateable, whether it be payable to the parson or vicar (*a*), or to a layman (*b*). A tithe rentcharge, as defined in the Tithe Act, 1891 (*c*), is rateable in the hands of the owner (*d*).

Metalliferous mines.

19. The lessor of a mine other than a coal mine is rateable for it if the dues are wholly reserved in kind although the lessor has the option to take them in money (*e*).

Allotments.

20. A local authority which provides and lets allotments is rateable therefor as if it were the occupier (*f*).

Advertising stations.

21. If land not otherwise occupied, including that part of a highway which is in front of buildings in course of construction, is used for advertisements, whether temporarily or permanently, the person who allows the land to be used by the advertising contractor or, if that person cannot be ascertained, the owner, is rateable therefor (*g*). Where the land is also occupied for other purposes,

able. A parson or vicar is not rateable for a payment made to him out of the proceeds of a tithe rentcharge which is not assigned to him (*Frend* v. *Tolleshunt Knights* (*Churchwardens*) (1859), 1 E. & E. 753).

(*q*) Poor Relief Act, 1601 (43 Eliz. c. 2), s. 1. These persons are there described as "occupiers" of "tithes impropriate or propriations of tithes" (see pp. 3, 4, *ante*), but they are in effect owners. The rateable value is, however, calculated as if they were occupiers; see p. 45, *post*.

(*r*) *R.* v. *Carlyon* (1789), 3 Term Rep. 385; Tithe Act, 1836 (6 & 7 Will. 4, c. 71), s. 69. As to the partial exemption in favour of tithe rentcharge attached to a benefice, see p. 23, *post*.

(*s*) *Lowndes* v. *Horne* (1779), 2 Wm. Bl. 1252; *Rann* v. *Pickin* (1782), Cald. Mag. Cas. 196.

(*t*) *R.* v. *Toms* (1780), 1 Doug. (K. B.) 401; *Chatfield* v. *Ruston* (1825), 3 B. & C. 863; *R.* v. *Boldero* (1825), 4 B. & C. 467; *R.* v. *Lacy* (1826), 5 B. & C. 702; *Mitchell* v. *Fordham* (1827), 6 B. & C. 274; *R.* v. *Wistow* (*Inhabitants*) (1836), 5 Ad. & El. 250; *R.* v. *Shaw* (1848), 12 Q. B. 419; see title ECCLESIASTICAL LAW, Vol. XI., p. 749, note (*l*).

(*a*) *R.* v. *Great Hambleton* (*Churchwardens*) (1834), 1 Ad. & El. 145; *R.* v. *Christopherson* (1885), 16 Q. B. D. 7, C. A.

(*b*) *Esdaile* v. *City of London Union Assessment Committee* (1887), 19 Q. B. D. 431, C. A.

(*c*) Tithe Act, 1891 (54 & 55 Vict. c. 8), s. 9 (2).

(*d*) *Ibid.*, ss. 6, 8; see title ECCLESIASTICAL LAW, Vol. XI., pp. 749, 750. Extraordinary tithe rentcharge is not rateable; see p. 23, *post*.

(*e*) Rating Act, 1874 (37 & 38 Vict. c. 54), s. 13; *Van Mining Co.* v. *Llanidloes Overseers* (1876), 1 Ex. D. 310, C. A. (which was a case of a lead mine). As to ownership of mines generally, see title MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 506 *et seq.*

(*f*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 27 (2); and see title ALLOTMENTS, Vol. I., p. 354. An apportioned part of the rate is added to the rent of each allotment.

(*g*) Advertising Stations (Rating) Act, 1889 (52 & 53 Vict. c. 27), s. 3; *Chappell* v. *St. Botolph Overseers*, [1892] 1 Q. B. 561; *Burton* v. *St. Giles' and St. George's Assessment Committee*, [1900] 1 Q. B. 389; *Shelly* v. *Dillon* (1892), 30 L. R. Ir. 304. If there is no middleman, the person who permits

and some person is rateable in respect thereof, that person is rateable for the whole value of the land, including the value of the advertising station (*h*).

SECT. 3. Special Cases in which Owners are Liable as such.

22. Promoters of undertakings becoming possessed of land under the Lands Clauses Consolidation Act, 1845 (*i*), though not liable as such promoters to be rated, are liable, until the works shall be completed and assessed, to make good the deficiency arising in the poor rate by reason of the land having been taken and used for the purposes of the works (*j*).

Owners of lands acquired compulsorily.

SECT. 4.—*Owners Rateable in Place of Occupiers.*

23. In respect of various classes of small property, the liability to the poor rate has been transferred by statute from the occupier, who would otherwise have been liable, to the owner (*k*).

Liability of owners.

24. In a parliamentary borough, where a house is wholly let out in apartments or lodgings not separately rated on the 15th August, 1867, the owner is rateable for the whole house without any reduction, even though the various apartments are separately rateable hereditaments (*l*) and are separately assessed in the valuation list (*m*).

Houses let in apartments.

25. The occupier of any hereditament, of whatever value, let to him for a term not exceeding three months, including a hereditament let from week to week at a week's notice, is entitled to deduct from his rent the poor rate paid by him (*n*).

Premises let on quarterly or shorter terms.

the advertiser to erect his advertisement is rateable under the statute; but this is not the common case.

(*h*) Advertising Stations (Rating) Act, 1889 (52 & 53 Vict. c. 27), s. 4; see *Lewisham Corporation* v. *Avey* (1912), 76 J. P. 343 (where the wall of a house was reserved to a lessor as an advertising station).

(*i*) 8 & 9 Vict. c. 18.

(*j*) *Ibid.*, s. 133; see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 16—18. Such land may, however, be temporarily the subject of rateable occupation even during the construction of the works; see *Mitchell Brothers, Ltd.* v. *Worksop Union* (1904), 1 Konstam's Rating Appeals, 181; 68 J. P. 55; and see p. 6, *ante*.

(*k*) The Poor Relief Act, 1819 (59 Geo. 3, c. 12), s. 19, which dealt with this subject, has not been explicitly repealed; but the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), and the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41) (see note (*l*), *infra*), repeal it by implication (*West Ham* (*Churchwardens*) v. *Fourth City Mutual Building Society*, [1892] 1 Q. B. 654).

(*l*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 7; *Stamper* v. *Sunderland Overseers* (1868), L. R. 3 C. P. 388; *White and Hales* v. *Islington Corporation*, [1909] 1 K. B. 133, C. A., overruling *Davis* v. *Wallis*, [1908] 2 K. B. 134; and see title ELECTIONS, Vol. XII., p. 170. The agent who collects the rents is not liable to be rated as the "owner" under this provision (*Nokes* v. *Strong*, [1909] 2 K. B. 625); compare note (*p*), p. 20, *post*. The above enactment overrides, as far as houses of the class described and situated in parliamentary boroughs are concerned, the provisions of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), ss. 3, 4; see p. 20, *post*.

(*m*) *Griggs* v. *Stevens* (1909), 74 J. P. 67.

(*n*) Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 1; *Hammond* v. *Farrow*, [1904] 2 K. B. 332; and see title LANDLORD AND TENANT, Vol. XVIII., pp. 488, 489.

SECT. 4. **Owners Rateable in Place of Occupiers.**

Small tenements.

Agreement for payment by owner.

Order by local authority rating the owner.

26. In the case of a hereditament below a certain specified value (*o*), the owner may agree with the overseers for a term of not less than a year to pay the poor rates, whether the hereditament is occupied or not, and the overseers may allow him a commission not exceeding 25 per cent. on the amount of the rates (*p*). In a rural parish, the consent of the parish council or parish meeting is necessary (*q*); in an urban parish, that of the borough or district council (*r*) or of the vestry (*s*).

In the case of all hereditaments which are within the same limits of value (*t*), and which include a dwelling-house, the local authority above referred to may make an order for rating the owner instead of the occupier to all rates made after the date of the order, the owner receiving in any case an abatement of 15 per cent., and if he claims to be rated, whether the hereditament is occupied or not, a further abatement not exceeding 15 per cent. (*u*). The same authority may rescind the order after six months' notice (*v*).

Deductions in relation to franchise.

27. For franchise purposes, allowances or deductions actually made, and purporting to have been made under the preceding provisions (*w*), are deemed to have been validly made (*a*).

(*o*) For the limits of value, see title LANDLORD AND TENANT, Vol. XVIII., p. 488, note (*b*).

(*p*) Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 3. "Owner" is defined as "any person receiving or claiming the rent of the hereditament for his own use, or receiving the same for the use of any corporation aggregate, or of any public company, or of any landlord or lessee who shall be a minor, a married woman, or insane, or for the use of any person for whom he is acting as agent" (*ibid.*, s. 20). Such an agreement cannot be made where the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 4 (see the text, *infra*), is in force, or *vice versâ* (*Janes* v. *Woolwich Corporation* (1903), Ryde and Konstam's Rating Appeals, 333). It is uncertain whether such an agreement will continue in force after the value of the hereditament has increased beyond the prescribed limit (*Norwood Overseers* v. *Salter*, [1892] 2 Q. B. 118).

(*q*) Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 4), s. 3; Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 6, 19; and see title LOCAL GOVERNMENT, Vol. XIX., pp. 246, 247, 258, 259.

(*r*) If an order has been made under the Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 33 (1), (6), 34; and see title LOCAL GOVERNMENT, Vol. XIX., p. 267.

(*s*) If no order has been made; see note (*r*), *supra*; and see title LOCAL GOVERNMENT, Vol. XIX., p. 261.

(*t*) See note (*o*), *supra*. An order made under the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 4, applies only to hereditaments whose value is below the maximum when the particular rate is made (*Norwood Overseers* v. *Salter*, [1892] 2 Q. B. 118).

(*u*) Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 4. As to the forfeiture of the right to abatement by non-payment of poor rate, see *ibid.*, s. 5.

(*v*) *Ibid.*, s. 4 (3). A resolution to make all agreements with owners under *ibid.*, s. 3, has the effect of rescinding an order under *ibid.*, s. 4 (*Janes* v. *Woolwich Corporation*, *supra*).

(*w*) *I.e.*, under the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41); see the text, *supra*.

(*a*) Assessed Rates Act, 1879 (42 & 43 Vict. c. 10). As to the rating of owners instead of occupiers in its relation to the franchise, see title ELECTIONS, Vol. XII., pp. 170, 187.

SECT. 4. Owners Rateable in Place of Occupiers.

Sporting rights.

28. Where any right of sporting (*b*) is let to a person other than the occupier of the land, either the owner or the lessee of the right is rated in respect of it, at the discretion of the persons who make the rate (*c*). If the right is enjoyed by the owner, not being the occupier of the land, the occupier may deduct from his rent the amount of the rate paid by him in respect of the rateable value due to the sporting right (*d*).

Metalliferous mines held at money rent.

29. The occupier of a mine not being a coal mine or a mine for which dues are payable in kind may in certain cases deduct from his rent half the rates payable by him in respect of the mine (*e*).

SECT. 5.—*Exemptions of Persons otherwise Rateable.*

Scientific, literary, and art societies.

30. There is a statutory exemption (*f*) from poor rate in favour of a society instituted exclusively (*g*) for the purposes of science, literature, or the fine arts, including music (*h*), and supported wholly or in part by annual voluntary contributions (*i*), provided (*k*) that

(*b*) For the definition of "right of sporting," see p. 4, *ante*; and for the method of valuation, see pp. 44, 45, *post*. As to sporting rights, generally, see title GAME, Vol. XV., pp. 207 *et seq.*

(*c*) Rating Act, 1874 (37 & 38 Vict. c. 54), ss. 6 (2), (4), 9.

(*d*) *Ibid.*, ss. 6 (1), (4), 9.

(*e*) Rating Act, 1874 (37 & 38 Vict. c. 54), ss. 8, 9. *Ibid.*, s. 8, applies only to mines made rateable by that Act. Coal mines were already rateable under the Poor Relief Act, 1601 (43 Eliz. c. 2); and lessors of dues payable in kind had been already held rateable; see note (*c*), p. 4, *ante*. The Rating Act, 1874 (37 & 38 Vict. c. 54), s. 8, has no operation where there is a specific contract on the part of the occupier to pay the rate in the event of the mine being made rateable, which was actually done by the Act. As to what is or is not such a specific contract, see *Devonshire (Duke)* v. *Barrow Steel Co.* (1877), 2 Q. B. D. 286, C. A.; *Chaloner* v. *Bolckow* (1878), 3 App. Cas. 933.

(*f*) Scientific Societies Act, 1843 (6 & 7 Vict. c. 36), s. 1. For cases in which the exemption has been held to apply, see titles LITERARY AND SCIENTIFIC INSTITUTIONS, Vol. XIX., p. 205, note (*e*). For cases in which the exemption has been held not to apply, see *ibid.*; *St. Marylebone Vestry* v. *Zoological Society of London* (1854), 3 E. & B. 807; *R.* v. *Royal Medical and Chirurgical Society of London* (1857), 30 L. T. (o. s.) 133; *Liverpool Corporation* v. *West Derby Union* (1905), 92 L. T. 467 (free library); and as to other particular societies, see notes (*g*)—(*k*), *infra*.

(*g*) This word is important (*R.* v. *Cockburn* (1852), 16 Q. B. 480 (where the United Service Institution was held not to be exempt); *Inland Revenue Commissioners* v. *Forrest* (1890), 15 App. Cas. 334, 352); and see title LITERARY AND SCIENTIFIC INSTITUTIONS, Vol. XIX., p. 205, notes (*e*), (*g*).

(*h*) *Royal College of Music* v. *Westminster Vestry*, [1898] 1 Q. B. 809, C. A. But a musical society the primary object of which is the amusement of the members is not exempt (*R.* v. *Brandt* (1851), 16 Q. B. 462).

(*i*) Contributions are not voluntary if a material equivalent of pecuniary value is received in return for them (*Savoy Overseers, etc.* v. *Art Union of London*, [1896] A. C. 296); but a grant made by Government or by a county council does not prevent the exemption applying (*Hornsey School of Art* v. *Edmonton Union* (1905), 2 Konstam's Rating Appeals, 393; 94 L. T. 203).

(*k*) *R.* v. *Jones* (1846), 8 Q. B. 719. But the exemption is not defeated by the possibility of a division of the property upon a dissolution of the society (*Birmingham (Churchwardens)* v. *Shaw* (1849), 10 Q. B. 868 (Birmingham New Library); *R.* v. *Manchester Overseers* (1851), 16 Q. B. 449 (Royal Manchester Institution)), nor by the sale of a member's share

SECT. 5. **Exemptions of Persons otherwise Rateable.**

any division of money among the members is expressly prohibited by the laws of the society, and that the prescribed (*l*) certificate by the Chief Registrar of Friendly Societies is obtained (*m*).

Extent of exemption.

The exemption applies only in respect of property occupied by the society for its own business and purposes (*n*), and does not apply if any part of the premises is sublet (*o*), unless that part is separately rated (*p*).

Churches, chapels, and Sunday schools.

31. There is a statutory exemption in favour of churches, chapels, and premises exclusively appropriated to public religious worship (*q*). The exemption applies although some part of the premises is used for Sunday or infant schools, or for charitable education (*r*); but it does not apply to college chapels (*s*), or to burial grounds (*t*) acquired under the Church Building Acts (*u*).

Exemption may also be granted at their discretion by rating authorities to certain Sunday and ragged school premises which do not fall within the preceding exemption (*a*).

Voluntary schools.

No person is liable to be rated in respect of any non-provided

(*Bradford Library Society* v. *Bradford* (*Churchwardens*) (1858), 1 E. & E. 88; *Liverpool Library* v. *Liverpool Corporation* (1860), 5 H. & N. 526), nor by the fact that some of the members are paid for their services to the society (*Royal College of Music* v. *Westminster Vestry*, [1898] 1 Q. B. 809, C. A.).

(*l*) See title LITERARY AND SCIENTIFIC INSTITUTIONS, Vol. XIX., p. 207.

(*m*) The certificate is a condition precedent to the exemption being allowed; see the Scientific Societies Act, 1843 (6 & 7 Vict. c. 36), ss. 1—6; Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 2. As to appeal against the certificate, or from a refusal to grant a certificate, see title LITERARY AND SCIENTIFIC INSTITUTIONS, Vol. XIX., p. 208. The grant of a certificate is, however, not necessarily followed by the allowance of the exemption (*R.* v. *Phillips* (1848), 8 Q. B. 745); and see title LITERARY AND SCIENTIFIC INSTITUTIONS, Vol. XIX., p. 207.

(*n*) Scientific Societies Act, 1843 (6 & 7 Vict. c. 36), s. 1. This includes rooms occupied by the servants of the society for its purposes (*St. Anne, Westminster* (*Churchwardens*) v. *Linnæan Society of London* (1854), 3 E. & B. 793).

(*o*) *Purvis* v. *Traill* (1849), 3 Exch. 344; *R.* v. *Royal Medical and Chirurgical Society of London* (1857), 30 L. T. (o. s.) 133; *Clarendon* (*Earl*) v. *St. James* (*Rector, etc.*) (1852), 10 C. B. 806; *Jenner Institute of Preventive Medicine* v. *St. George's Union* (1900), Ryde and Konstam's Rating Appeals, 242.

(*p*) *R.* v. *Manchester Overseers* (1851), 16 Q. B. 449.

(*q*) Poor Rate Exemption Act, 1833 (3 & 4 Will. 4, c. 30), s. 1; and see title ECCLESIASTICAL LAW, Vol. XI., pp. 791, 819, 827. The churches, chapels and premises, if not belonging to the Established Church, must have been certified under the Places of Worship Registration Act, 1855 (18 & 19 Vict. c. 81) (Poor Rate Exemption Act, 1833 (3 & 4 Will. 4, c. 30), s. 1).

(*r*) *Ibid.*, s. 2; and see title ECCLESIASTICAL LAW, Vol. XI., pp. 791, 819.

(*s*) *Oxford Poor Rate Case* (1857), 8 E. & B. 184.

(*t*) *North Manchester Overseers* v. *Winstanley*, [1908] 1 K. B. 835, C. A. The point was not raised in the House of Lords, where the rateable occupation of the burial ground was affirmed for other reasons (S. C. [1910] A. C. 7); and see titles BURIAL AND CREMATION, Vol. III., pp. 410, 465; ECCLESIASTICAL LAW, Vol. XI., pp. 732, note (*r*), 741.

(*u*) As to the Church Building Acts, see title BURIAL AND CREMATION, Vol. III., p. 436, note (*c*).

(*a*) Sunday and Ragged Schools (Exemption from Rating) Act, 1869 (32 & 33 Vict. c. 40); *Bell* v. *Crane* (1873), L. R. 8 Q. B. 481; and see title ECCLESIASTICAL LAW, Vol. XI., pp. 791, 792.

school, except to the extent of any profit derived by the managers from letting it (*b*); but a boarding school is not within this exemption (*c*).

SECT. 5. Exemptions of Persons otherwise Rateable.

32. Extraordinary tithe rentcharge is not rateable (*d*). Extraordinary tithe rentcharge.

33. Lighthouses and certain other property belonging to or occupied by the Trinity House or the Board of Trade are exempt from rates (*e*). Lighthouses.

34. No person is liable to be rated for an otherwise unoccupied house by reason of a room therein being used for taking a poll at a parliamentary election (*f*). Polling stations in unoccupied houses.

SECT. 6.—*Partial Exemptions.*

35. The occupier of agricultural land (*g*) is entitled to be rated therefor to the poor rate at half the rate in the £ payable in respect of buildings and other hereditaments (*h*). A similar exemption applies to the owner of tithe rentcharge attached to a benefice (*i*). Agricultural land and tithe attached to benefice.

36. Burial grounds acquired under the Burial Acts (*k*) are to be rated to all county, parochial, and other local rates upon a value no higher than that at which the land was assessed at the time of acquisition (*l*). Burial grounds.

(*b*) Voluntary Schools Act, 1897 (60 & 61 Vict. c. 5), ss. 3, 4; Education Act, 1902 (2 Edw. 7, c. 42), s. 25 (2), Sched. III., rr. 1, 10; and see titles CHARITIES, Vol. IV., p. 212; ECCLESIASTICAL LAW, Vol. XI., p. 792.

(*c*) *Royal Patriotic Fund (Commissioners)* v. *Wandsworth Corporation* (1903) 67 J. P. 311.

(*d*) Extraordinary Tithe Redemption Act, 1886 (49 & 50 Vict. c. 54), s. 4 (5); and see title ECCLESIASTICAL LAW, Vol. XI., pp. 751, 752.

(*e*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 731, 634. The exemption does not extend to a lighthouse controlled by a local authority (*Mersey Docks and Harbour Board* v. *Llaneilian Overseers* (1884), 14 Q. B. D. 770, C. A.); and, as to lighthouses, see title SHIPPING AND NAVIGATION.

(*f*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 6; see title ELECTIONS, Vol. XII., p. 310. It is not clear how far this exemption extends to elections other than parliamentary.

(*g*) The term "agricultural land" is defined by the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), s. 9. It does not include land covered with glass-houses or similar buildings (*Smith* v. *Richmond*, [1899] A. C. 448; compare Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1) (b)), or a burial ground; see title BURIAL AND CREMATION, Vol. III., p. 466.

(*h*) Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), ss. 1, 9. This temporary Act has been extended to the 31st December, 1912, by the Expiring Laws Continuance Act, 1911 (1 & 2 Geo. 5, c. 22), s. 1 (2). The enactments referred to do not prevent the rateable value of agricultural land being calculated in the ordinary way; it is, however, entered in a special column of the valuation list and rate-book; see pp. 48, 55, *post.*

(*i*) Tithe Rentcharge (Rates) Act, 1899 (62 & 63 Vict. c. 17), s. 1. By *ibid.*, s. 4, this Act remains in force during the continuance of the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16); see note (*h*), *supra;* and see title ECCLESIASTICAL LAW, Vol. XI., p. 750.

(*k*) See title BURIAL AND CREMATION, Vol. III., p. 445, note (*u*).

(*l*) Burial Act, 1855 (18 & 19 Vict. c. 128), s. 15; and see title BURIAL AND CREMATION, Vol. III., pp. 465, 466. This does not apply to burial

SECT. 6. **Partial Exemptions.**

Light railways.

37. An order authorising the construction of a light railway may direct that it shall, for a limited period not exceeding ten years, be rated to any local rate only at the value which the land would have possessed if it had remained in the condition in which it was when acquired (*m*).

Canals.

38. A partial exemption somewhat similar to that which may be applied to light railways appears in many of the Acts authorising the construction of canals (*n*).

Property acquired for telegraphs.

39. Property acquired by the Postmaster-General under the Telegraph Act, 1863 (*o*), is rateable (*p*), only at the value at which it was properly assessed or assessable at the date of its acquisition by him (*q*).

Persons liable to repair highway.

40. A person who, by virtue of a liability to repair some highway *ratione tenuræ*, is by statute exempt from highway rates, appears to be exempt also from such part of a poor or other rate as is levied to meet highway expenses (*r*).

Other special kinds of property.

41. The Legislature has in the past conferred upon various special kinds of property (*s*) exemptions (*t*) more or less complete from payment of rates (*a*).

grounds otherwise acquired; compare *North Manchester Overseers* v. *Winstanley*, [1908] 1 K. B. 835, C. A.; and see note (*t*), p. 22, *ante*.

(*m*) Light Railways Act, 1896 (59 & 60 Vict. c. 48), s. 5 (1); and, as to light railways generally, see title TRAMWAYS AND LIGHT RAILWAYS.

(*n*) See, *e.g.*, *R.* v. *Calder and Hebble Navigation Co.* (1818), 1 B. & Ald. 263; *R.* v. *Dudley Canal Co.* (1825), 7 Dow. & Ry. (K. B.) 466; *R.* v. *Regent's Canal Co.* (1827), 6 B. & C. 720; *R.* v. *Chelmer and Blackwater Navigation Co.* (1831), 2 B. & Ad. 14; *R.* v. *Monmouthshire Canal Co.* (1835), 3 Ad. & El. 619; *R.* v. *Leeds and Liverpool Canal Co.* (1838), 7 Ad. & El. 671; *R.* v. *Bristol Dock Co.* (1841), 1 Q. B. 535; *R.* v. *Birmingham Canal Co.* (1838), 7 L. J. (M. C.) 57; *R.* v. *Aylesbury with Walton Overseers* (1846), 9 Q. B. 261; *Regent's Cana Co.* v. *Hendon Overseers* (1856), 6 E. & B. 852; *Erewash Canal Co.* v. *Eastwood (Churchwardens)* (1856), 4 W. R. 494; *R.* v. *Grand Junction Canal Co.* (1859), 7 W. R. 597; *R.* v. *Glamorganshire Canal Co.* (1860), 3 E. & E. 186; *Grand Junction Canal Co.* v. *Hemel Hempstead* (1870), L. R. 6 Q. B. 173; *Warwick, etc. Canal Navigation Co.* v. *Birmingham Guardians* (1872), 37 J. P. 150; *Regent's Canal Co.* v. *St. Pancras Assessment Committee* (1877), 3 Q. B. D. 73; *Glamorganshire Navigation Canal Co.* v. *Merthyr Tydfil Union* (1902), 67 J. P. 52. As to canal companies generally, see title RAILWAYS AND CANALS, Vol. XXIII., pp. 779 *et seq.*

(*o*) 31 & 32 Vict. c. 110. As to such acquisition, see title TELEGRAPHS AND TELEPHONES.

(*p*) But see p. 16, *ante*.

(*q*) Telegraph Act, 1868 (31 & 32 Vict. c. 110), s. 22; and see the cases cited in note (*q*), p. 16, *ante*.

(*r*) See title HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., pp. 90, 91.

(*s*) *E.g.*, as to lands embanked from the Thames, see *Williams* v. *Pritchard* (1790), 4 Term Rep. 2; *Eddington* v. *Borman* (1790), 4 Term Rep. 4; *Perchard* v. *Heywood* (1800), 8 Term Rep. 468; *R.* v. *London Gas Light Co.* (1828), 8 B. & C. 54; *Sion College* v. *London Corporation*, [1901] 1 K. B. 617, C. A.; as to the site of the old London Customs House and quays, see *London Corporation* v. *Netherlands Steamboat Co.*, [1906] A. C. 263; and as to Serjeant's Inn, see *Thorpe* v. *Adams* (1871), L. R. 6 C. P. 125;

(*t*), (*a*) For notes (*t*) and (*a*), see next page.

Part II.—Poor Rate: Basis of Assessment.

SECT. 1.—*Rateable Value: General Principles.*

SECT. 1. Rateable Value: General Principles.

Rateable value.

42. The poor rate is assessed upon the "rateable value" of the hereditament (*b*), that is to say, upon a sum estimated to represent the rent at which the hereditament might reasonably be expected to let from year to year, free of (*c*) all usual tenant's rates and taxes and tithe commutation rentcharge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain the hereditament in a state to command the rent (*d*). "The gross estimated rental" is estimated in the same way, but without any deduction for repairs, insurance, or expenses necessary for maintenance (*e*); it thus forms a step in the ascertainment of the rateable value (*f*).

Gross estimated rental.

Jonas v. *St. Dunstan-in-the-West Overseers* (1908), 72 J. P. 157, C. A. As to property occupied within the meaning of local Acts for "purposes of public charity," see *Hall* v. *Derby Sanitary Authority* (1885), 16 Q. B. D. 163; "for the education of the poor exclusively," *Hadfield* v. *Liverpool Corporation* (1899), 80 L. T. 566; and "solely for public purposes," *Essendon Corporation* v. *Blackwood* (1877), 2 App. Cas. 574; and see title CHARITIES, Vol. IV., pp. 107, 117, 213.

(*t*) As to when an exemption covers more modern rates of a new kind, and when it enures for the benefit of purchasers, or if the land is used for other purposes, see *Williams* v. *Pritchard* (1790), 4 Term Rep. 2; *Eddington* v. *Borman* (1790), 4 Term Rep. 4; *Perchard* v. *Heywood* (1880), 8 Term Rep. 468; *R.* v. *London Gas Light Co.* (1828), 8 B. & C. 54; *Sion College* v. *London Corporation*, [1901] 1 K. B. 617, C. A.; *London Corporation* v. *Netherlands Steamboat Co.*, [1906] A. C. 263; *Thorpe* v. *Adams* (1871), L. R. 6 C. P. 125; *Jonas* v. *St. Dunstan-in-the-West Overseers*, *supra*; and on the latter point, see also *Pontefract Assessment Committee* v. *Pontefract Park Trustees* (1898), 78 L. T. 738; *R.* v. *Worcester Union Guardians* (1853), 1 W. R. 146; *Manchester Corporation* v. *Manchester Overseers* (1853), 2 W. R. 64. As to the effect upon an exemption of a subsequent general statute, see *London and North Western Rail. Co.* v. *Walsall Overseers* (1876), 35 L. T. 626; *Bingley Urban District Council* v. *Midland Rail. Co.* (1899), 80 L. T. 725.

(*a*) As to what is included in the expression "poor rate and other charges at present collected with it," see *Whitehaven Harbour Commissioners* v. *Whitehaven Union Assessment Committee* (1905), 70 J. P. 89; and as to "general purposes rate," see *Burrup* v. *London and South Western Rail. Co.* (1890), 64 L. T. 112. The poor rate is a "public" tax (*R.* v. *Scott* (1790), 3 Term Rep. 602), and the county rate is a "parochial" tax (*R.* v. *Aylesbury with Walton Overseers* (1846), 9 Q. B. 261); and see title CHARITIES, Vol. IV., p. 213.

(*b*) Subject to what has been said about partial exemptions, pp. 23, 24, *ante*.

(*c*) *I.e.*, assuming the tenant to pay such rates and taxes.

(*d*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1; the definition in force in the Metropolis is worded somewhat differently (Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 4; see p. 115, *post*). Special standards of assessment are applied to certain mines, and to woodlands and sporting rights; see pp. 43—45, *post*.

(*e*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 15. The definition of gross value in force in the Metropolis is worded somewhat differently (Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 4; see p. 115, *post*). As to the purpose of estimating the gross estimated rental, see p. 30, *post*.

(*f*) In the simple case of a dwelling-house, the rent at which it would

SECT. 1. Rateable Value: General Principles.

Matters to be considered in ascertaining rental value:

(i.) as regards tenant;

43. In order to estimate the rent which would be paid from year to year, it is necessary to take into account all the persons who might possibly take the hereditament at a rent for such a term (*g*), including the person actually in occupation, even though he happens to be also the owner of the hereditament (*h*). The actual rent is not the measure of value (*i*); but a rent from year to year recently fixed as between strangers, and including the whole of the consideration proceeding from the tenant for the occupation of the hereditament, may be the best evidence of rateable value (*k*). If what is called "rent" includes a payment made for something other than the occupation of the hereditament, a correction must be made in order to arrive at the rateable value from the so-called rent (*l*).

(ii.) as regards term;

44. Although the tenant is assumed to take the hereditament only from year to year, he is supposed to have a reasonable prospect of continuing in occupation (*m*).

be let from year to year, if the landlord undertook to pay for the repairs and insurance, represents the gross estimated rental; and the rent at which it would be let from year to year, if the tenant undertook to pay for the repairs and insurance, represents, subject to a sinking fund for renewals, the rateable value (*R.* v. *Wells* (1867), L. R. 2 Q. B. 542). The deductions on account of repairs, insurance and expenses necessary for maintenance, being the difference between "gross estimated rental" and "rateable value," are often called "statutable deductions"; as to these, see, further, p. 30, *post*. In connection with special kinds of property, *e.g.*, railways, the rateable value is often ascertained first, and the amount of the deductions added thereto, in order to ascertain the gross estimated rental; see, generally, pp. 30 *et seq.*, *post*.

(*g*) The ideal person who would so take the hereditament is commonly called the "hypothetical tenant."

(*h*) *R.* v. *London School Board* (1886), 17 Q. B. D. 738, C. A.; *London County Council* v. *Erith* (*Churchwardens*) *and Dartford Union Assessment Committee*, [1893] A. C. 562. An occupying owner must, however, be taken into account as a possible tenant; and the rent that he would give as tenant may often (as in the case of a country mansion) be arrived at on considerations quite different from those which would actuate him in fixing a price for the purchase of the hereditament; see p. 28, *post*.

(*i*) *R.* v. *London School Board* (1886), 17 Q. B. D. 738, C. A.; see *R.* v. *Skingle* (1798), 7 Term Rep. 549; *Hayward* v. *Brinkworth Overseers* (1864), 10 L. T. 608.

(*k*) If, however, a premium is paid for the tenancy of the hereditament, or if some other sum is in fact periodically paid for the occupation besides what is called the rent (*Pullen* v. *St. Saviour's Union*, [1900] 1. Q. B. 138), or if a burdensome covenant is imposed upon the tenant (*Davies* v. *Seisdon Union*, [1908] A. C. 315), some addition must be made to the rent reserved before the rateable value can be arrived at from it.

(*l*) As where flats or property let by the week are let on the condition that the landlord pays the rates and taxes (see p. 29, *post*), a very frequent case, or where the "rent" includes the water rate (*Smith* v. *Birmingham* (*Churchwardens, etc.*) (1888), 22 Q. B. D. 211; not appealed against on this point). No correction is, however, admissible in the case of such property on account of its standing empty or of the rent being irrecoverable (*Smith* v. *Birmingham* (*Churchwardens, etc.*) (1888), 22 Q. B. D. 211, 703, C. A.). As to the nature of "rent" and as to payments which are not "rent," see title LANDLORD AND TENANT, Vol. XVIII., pp. 464–466.

(*m*) *Great Eastern Rail. Co.* v. *Haughley* (*Churchwardens, etc.*) (1866), L. R. 1 Q. B. 666; *R.* v. *South Staffordshire Waterworks Co.* (1885), 16 Q. B. D. 359, C. A.; *Clive* v. *Foy Overseers* (1875), 39 J. P. 774.

45. The rent which a tenant could afford to give is calculated with reference to the hereditament in its existing physical condition (*n*), and to the mode in which it is actually used (*o*). A continuance of the existing conditions is *primâ facie* assumed (*p*).

46. The rent is assumed to be given for the accommodation that the hereditament affords, and where the accommodation afforded by the hereditament is required for the carrying on of a gainful trade, that fact must be taken into account in ascertaining the rent that would be given (*q*).

(iii.) as regards condition of premises; (iv.) as regards accommodation afforded.

Where the trade could be equally well carried on upon some other hereditament of the same class, there is no need to inquire into the profits actually made (*a*), but where the trade can only be carried on upon the particular hereditament, as in the cases of licensed property (*b*), railways (*c*), tramways (*d*), waterworks (*e*), gasworks (*f*), electric undertakings (*g*), mines (*h*), harbours (*i*), and other

When it is unnecessary or necessary to inquire into profits made by use of premises.

(*n*) *R.* v. *Grand Junction Rail. Co.* (1844), 4 Q. B. 18; *Sculcoates Union* v. *Kingston-upon-Hull Dock Co.*, [1895] C. A. 136. If the land has buildings upon it and is occupied it must be valued with them (see, *e.g.*, *R.* v. *Aberystwith Overseers* (1808), 10 East, 354); but land must not be valued at the rent at which it would be let if more, or more valuable, buildings were erected upon it (*R.* v. *Gardner* (1774), 1 Cowp. 79; *Kempe* v. *Spence* (1779), 2 Wm. Bl. 1244; *R.* v. *Mast* (1795), 6 Term Rep. 154; *R.* v. *St. Luke's Hospital* (1760), 2 Burr. 1053, 1064; *East London Rail. Co. (Directors, etc.)* v. *Whitechurch* (1874), L. R. 7 H. L. 81, 86). Where the value of the land proceeds from the right to remove a portion of the soil, the rateable value is the rent which would be given for the land so far as it is workable and unexhausted, as in the case of a coal mine (*R.* v. *Bedworth (Inhabitants)* (1807), 8 East, 387; *Tyne Coal Co.* v. *Wallsend Overseers* (1877), 46 L. J. (M. C.) 185); of a brickfield (*R.* v. *Westbrook*, *R.* v. *Everist* (1847), 10 Q. B. 178); or of a gravel pit (*Farnham Flint, Gravel and Sand Co.* v. *Farnham Union*, [1901] 1 K. B. 272, C. A.).

(*o*) *Staley* v. *Castleton Overseers* (1864), 5 B. & S. 505; *Harter* v. *Salford Overseers* (1865), 6 B. & S. 591. The former case was distinguished upon the facts in *Hoyle and Jackson* v. *Oldham Poor Law Union Assessment Committee and Oldham Township (Churchwardens, etc.)*, [1894] 2 Q. B. 372, C. A. (where a strike was held not to have affected the rateable value of certain mills); but the rule as stated in the text, *supra*, was not doubted.

(*p*) *Staley* v. *Castleton Overseers*, *supra*; *R.* v. *Fletton Overseers* (1861), 3 E. & E. 450

(*q*) *R.* v. *Grand Junction Rail. Co.*, *supra*.

(*a*) As in the case of a small shop, or a barrister's chambers (*Mersey Docks* v. *Liverpool* (1873), L. R. 9 Q. B. 84, *per* BLACKBURN, J., at p. 97; *R.* v. *London and North Western Rail. Co.* (1874), L. R. 9 Q. B. 134, *per* BLACKBURN, J., at p. 144; see *R.* v. *North Aylesford Union Guardians* (1872), 37 J. P. 148). In such cases evidence of rateable value is found in the rent actually given for the hereditament, or in the rents prevailing for similar property in the neighbourhood; and an inquiry into profits is not admissible (*Cartwright* v. *Sculcoates Union*, [1900] A. C. 150, 157, 158). Neither do the profits made constitute an element in estimating the rateable value of factories; but here actual rents are rarely available, and other methods of valuation are employed; see p. 28, *post*.

(*b*) See p. 41, *post*.

(*c*) See p. 31, *post*.

(*d*) See p. 38, *post*.

(*e*) See p. 35, *post*.

(*f*) See p. 35, *post*.

(*g*) See p. 35, *post*.

(*h*) See p. 42, *post*.

(*i*) See p. 39, *post*.

SECT. 1. Rateable Value: General Principles.

special kinds of property (*k*), the actual profits made upon the hereditament are among the matters which an intending tenant would take into consideration, and are therefore used as a basis upon which to calculate the rateable value (*a*). Where the actual profits are thus looked at, the inquiry must embrace the whole of the profits made upon the hereditament, although a part of them does not enure to the actual occupier (*b*).

Capital value as evidence.

47. Where neither actual rents nor the profits of trade are available as evidence for the estimation of rateable value, a percentage of the capital value of the hereditament is in some cases taken as evidence, although not necessarily conclusive for that purpose (*c*). When such a course is taken, the capital value is the value for which a hereditament equally fit for the same purpose as the one to be valued could be erected on the site, and not the actual cost, nor the depreciated selling value, of the particular hereditament in question.

Machinery and plant.

48. The actual equipment of a hereditament with machinery and plant must not be left out of account (*d*), even though the whole

(*k*) Such as a racecourse (*R.* v. *Verrall* (1875), 1 Q. B. D. 9); a railway refreshment room (*Clark* v. *Fisherton-Angar* (1880), 6 Q. B. D. 139); cattle lairages (*Mersey Docks and Harbour Board* v. *Birkenhead Assessment Committee*, [1901] A. C. 175); a toll-bridge (*R.* v. *Hammersmith Bridge Co.* (1849), 15 Q. B. 369); a market (*Brecon Markets Co.* v. *St. Mary's, Brecon* (1877), 36 L. T. 109); but, as to those tolls of a market which must be left out of account, see p. 9, *ante*.

(*a*) *Cartwright* v. *Sculcoates Union*, [1900] A. C. 150, 157, 158. The methods by which rateable value is calculated upon such a basis are described at pp. 30 *et seq.*, *post*.

(*b*) *R.* v. *Sherford* (1867), L. R. 2 Q. B. 503; *R.* v. *Rhymney Rail. Co.* (1869), L. R. 4 Q. B. 276; see *Davies* v. *Seisdon Union*, [1908] A. C. 315. As to the effect of statutory restrictions on profit, see p. 36, *post*. It makes no difference that a part of the receipts is received from the owners of property situated in another parish (*R.* v. *Holme Reservoirs* (*Directors*) (1862), 10 W. R. 734).

(*c*) This test is often applied to hereditaments occupied by a public authority in order to fulfil a public duty (see p. 16, *ante*; *R.* v. *London School Board* (1886), 17 Q. B. D. 738, C. A.; *London County Council* v. *Erith* (*Churchwardens*) *and Dartford Union Assessment Committee*, [1893] A. C. 562; *Liverpool Corporation* v. *Llanfyllin Assessment Committee*, [1899] 2 Q. B. 14, C. A.; *London School Board* v. *Wandsworth and Clapham Union* (1900), Ryde and Konstam's Rating Appeals, 24; *Liverpool Corporation* v. *Chorley Union Assessment Committee and Withnel Overseers*, [1912] 1 K. B. 270, C. A.), and to the indirectly productive portions of industrial undertakings (see pp. 31, 37, 38, *post*); but it does not appear to be applicable to the directly productive portions (*Great Central Railway* v. *Banbury Union, Sheffield Union* v. *Great Central Railway*, [1909] A. C. 78). It has been applied in ascertaining the rateable value of a lighthouse (*Lancaster* (*Port Commissioners*) v. *Barrow-in-Furness Overseers*, [1897] 1 Q. B. 166).

(*d*) This principle applies whether the rateable value is arrived at by a percentage on capital value, or by a mere estimate of rent; and was laid down with regard to a steelyard (*R.* v. *St. Nicholas, Gloucester* (1783), 1 Bott's Poor Laws by Const, 163), to a cotton carding machine (*R.* v. *Hogg* (1787), 1 Term Rep. 721), to steam engines etc. (*R.* v. *Birmingham and Staffordshire Gas Light Co.* (1837), 6 Ad. & El. 634), to machinery in ironworks (*R.* v. *Guest* (1838), 7 Ad. & El. 951), to cranes and other machines used for dock purposes (*R.* v. *Southampton Dock Co.* (1851), 14 Q. B. 587; *London and India Docks Joint Committee* v. *Poplar Union* (1900), Ryde and Konstam's Rating Appeals, 245), to lead chambers

or some part of the machinery and plant is unattached to the freehold, or would not pass upon a demise of the hereditament (*e*).

Deductions from rental value :—

(i.) usual tenant's rates and taxes when paid by landlord ;

49. The probable rent is to be estimated upon the assumption that the tenant pays all usual tenant's rates and taxes (*f*): if, therefore, the landlord pays these, a deduction must be made from the actual rent when using it as a basis for calculating the gross estimated rental (*g*); and for this purpose the amount to be deducted (*h*) must be ascertained irrespective of the fact that the landlord receives an allowance or abatement (*i*). The land tax (*k*) is not a tenant's tax, nor is the income tax (*l*); but a special rate (*m*), levied for protection against damage by flood or erosion, may be a tenant's rate.

for the manufacture of sulphuric acid (*R.* v. *Haslam* (1851), 17 Q. B. 220), to machines permanently connected with railway premises (*R.* v. *North Staffordshire Rail. Co.* (1860), 3 E. & E. 392), to retorts, gasholders etc. in a gasworks (*R.* v. *Lee* (1866), L. R. 1 Q. B. 241), to machinery in shipbuilding yards (*Laing* v. *Bishopwearmouth* (1878), 3 Q. B. D. 299; *Tyne Boiler Works Co.* v. *Longbenton Overseers* (1886), 18 Q. B. D. 81, C. A.), to bobbinet machines in a lace factory (*Gifford, Fox & Co.* v. *Chard Union* (1890), 63 L. T. 249), and to floating pontoons (*Tyne Pontoons Co.* v. *Tynemouth Union Guardians* (1897), 76 L. T. 782).

(*e*) *Kirby* v. *Hunslet Assessment Committee*, [1906] A. C. 43. This decision, which was concerned with a small engineering works in which none of the machinery and plant was attached to the freehold, abolished the restrictions which were thought to have been imposed upon the principle stated in the text, *supra*, by the decisions in *R.* v. *Halstead Overseers* (1867), 32 J. P. 118; *Chidley* v. *West Ham* (*Churchwardens*) (1874), 32 L. T. 486; *Crockett* v. *Northampton Assessment Committee* (1902), 72 L. J. (K. B.) 320. The method by which the principle laid down in *Kirby* v. *Hunslet Assessment Committee, supra*, should be fully applied in practice is still undetermined.

(*f*) As to the construction of covenants to pay rates and taxes, see title LANDLORD AND TENANT, Vol. XVIII., pp. 489 *et seq.*

(*g*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1; see p. 25, *ante*. The poor rate itself (*Hackney and Lamberhurst Tithe Commutation Rent Charges* (1858), E. B. & E. 1, 47) and the other rates described in this title, with the exception of special sewers rates (see p. 112, *post*) and private improvement rates (see p. 98, *post*), are tenant's rates. A water "rate" is not a rate, strictly speaking, but if included in the rent should be deducted before arriving at the gross estimated rental (*Smith* v. *Birmingham* (*Churchwardens, etc.*) (1889), 22 Q. B. D. 211, 703, C. A.; see p. 26, *ante*); compare *R.* v. *Bilston* (1865), L. R. 1 Q. B. 18; see p. 30, *post*.

(*h*) The amount to be deducted must, of course, be calculated by a proportion sum with reference to the rateable value, which it is the object of the calculation to fix (*Tyne Improvement Commissioners* v. *Chirton Overseers* (1862), 32 L. J. (M. C.) 192).

(*i*) *R.* v. *Dodd* (1865), L. R. 1 Q. B. 16, where the landlord had compounded under a local Act; but the decision applies equally where the landlord has become liable under the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41) (see p. 20, *ante*), or the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (see pp. 84, 87, *post*).

(*k*) *Hackney and Lamberhurst Tithe Commutation Rent Charges, supra*. As to land tax generally, see title LAND TAX, Vol. XVIII., pp. 307 *et seq.*

(*l*) Or property tax (*R.* v. *Southampton Dock Co.* (1851), 14 Q. B. 587). A deduction on account of tenant's property tax was allowed in *Hackney and Lamberhurst Tithe Commutation Rent Charges, supra*, but this decision does not appear to be consistent with the decision in *R.* v. *Southampton Dock Co., supra*. As to income tax generally, see title INCOME TAX, Vol. XVI., pp. 607 *et seq.*

(*m*) A sewers rate is, in general, deductible either as a tenant's rate or

SECT. 1. Rateable Value: General Principles.

In calculating the rateable value from the gross estimated rental, deductions must be made for the probable average annual cost of repairs and insurance, and other expenses necessary to maintain the hereditament in a state to command the rent (*n*). Such expenses include a sinking fund for the ultimate renewal of the perishable portions of the hereditament (*o*), whether such a sum is actually set aside or not (*p*), and some special rates, for example, a sewers rate (*q*), or, in valuing a fishery, a rate for fishery protection (*r*); but they do not include a water rate paid by the landlord (*s*), or the compensation charge imposed in respect of certain licensed premises (*t*).

(ii.) statutable deductions;

(iii.) tithe rentcharge.

Tithe commutation rentcharge (*u*) and any rentcharge equivalent thereto (*v*) must be deducted.

SECT. 2.—*Rateable Value of Special Classes of Property.*

SUB-SECT. 1.—*Railways.*

Division of undertaking into directly productive and indirectly productive portions.

50. In order to ascertain the rateable value of that portion of a railway undertaking (*w*) which is situated in a given parish, the whole undertaking is divided (*x*) into those portions which are directly productive of profit and those portions which are thought to be only indirectly productive thereof (*a*). The former portions consist

tax, or as an expense necessary to maintain the hereditament (*R.* v. *Adames* (1832), 4 B. & Ad. 61; *R.* v. *Hall Dare* (1864), 5 B. & S. 785; *R.* v. *Gainsborough Union* (1871), L. R. 7 Q. B. 64). But the deduction, where the rate is not deductible as a tenant's rate, is only admissible in respect of so much of the rate as is levied for the protection of the particular hereditament that is rated (*Green* v. *Newport Union, Stead* v. *Newport Union*, [1909] A. C. 35). The authority of *R.* v. *Vange* (*Inhabitants*) (1842), 3 Q. B. 242, is considerably diminished by the decision in *Green* v. *Newport Union, Stead* v. *Newport Union, supra.*

(*n*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1; see p. 25, *ante*).

(*o*) *R.* v. *Cambridge Gas Light Co.* (1838), 8 Ad. & El. 73.

(*p*) *R.* v. *London, Brighton and South Coast Rail. Co.* (1851), 15 Q. B. 313; *R.* v. *Great Western Rail. Co.* (1852), 15 Q. B. 1085; *R.* v. *Wells* (1867), L. R. 2 Q. B. 542; *Dewsbury and Heckmondwike Waterworks Board* v. *Penistone Union Assessment Committee* (1885), 16 Q. B. D. 585 (not appealed against on this point).

(*q*) As to a sewers rate, see note (*m*), p. 29, *ante*.

(*r*) As expenses necessary to maintain the hereditament; see *R.* v. *Smith* (1885), 55 L. J. (M. C.) 49.

(*s*) *R.* v. *Bilston* (1865), L. R. 1 Q. B. 18. But in ascertaining the gross estimated rental, the water rate should have been already excluded; see note (*g*), p. 29, *ante*.

(*t*) Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 21; *Waddle* v. *Sunderland Union*, [1908] 1 K. B. 642, C. A.; and see title INTOXICATING LIQUORS, Vol. XVIII. pp. 74, 75.

(*u*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1.

(*v*) *Hackett* v. *Long Bennington Overseers* (1864), 16 C. B. (N. S.) 38.

(*w*) As to the valuations of tramway undertakings, see note (*a*), p. 38, *post*.

(*x*) This division is made for purposes of valuation only; there is no objection to the whole of the railway undertaking in one parish being shown in a single entry in the valuation list and poor rate, though station hotels should probably be assessed separately (*North Eastern Railway* v. *York Union*, [1900] 1 Q. B. 733). As to the valuation list, see pp. 47 *et seq.*, *post*.

(*a*) *R.* v. *Great Western Rail. Co.* (1846), 6 Q. B. 179; *R.* v. *Eastern Counties Rail. Co.* (1863), 4 B. & S. 58. The distinction between the two classes of works, which is somewhat artificial, had already been set up in

of the running lines (*b*), the latter of the sidings, the stations and the rest of the undertaking (*c*).

51. The stations, sidings and other indirectly productive portions are rated in the parish in which they are situate, and are usually valued by putting a percentage upon their present structural value (*d*).

Valuation of portions indirectly productive.

52. The rateable value of a railway is ascertained in ordinary circumstances by reference to the ability to carry on a gainful trade thereon (*e*); and, as it scarcely ever happens that a rent is paid for that portion of a railway line which lies within a given parish, the calculation of the rateable value of an ordinary running line (*f*) is made upon the basis of the profits which can be earned by the parochial portion of the railway (*g*). The receipts earned in the particular parish form the starting point of the calculation (*h*).

Earning capacity of directly productive portion within parochial area.

53. The gross receipts actually earned in the parish must be specially calculated (*i*), the calculation being made for the latest

Calculation and proof of gross receipts earned in parish.

the cases of canals (see p. 38, *post*) waterworks (see p. 35, *post*) and gasworks (see p. 35, *post*).

(*b*) The "running lines" practically comprise all those lines whose primary and principal purpose is the carrying of traffic forwards to its destination; and only those lines whose primary and principal purpose is the waiting and marshalling of traffic are reckoned as "sidings" for rating purposes (*Stockport Union Assessment Committee* v. *London and North Western Rail. Co.* (1898), 78 L. T. 180, C. A.; *Great Northern Rail. Co.* v. *Edmonton Union* (1905), 1 Konstam's Rating Appeals, 186; 93 L. T. 479; *Taff Vale Rail. Co.* v. *Cardiff Union* (1906), 2 Konstam's Rating Appeals, 486; 95 L. T. 455). As to sidings generally, see title RAILWAYS AND CANALS, Vol. XXIII., pp. 681 *et seq.*

(*c*) Signal boxes (*Midland Railway* v. *Pontefract Assessment Committee*, [1901] 2 K. B. 189) and signals and levers (*Great Northern Rail. Co.* v. *Edmonton Union*, *supra*, at pp. 204, 211) are among the indirectly productive portions; compare the cases cited with regard to general district rate in note (*k*), p. 86, *post*.

(*d*) *R.* v. *North Staffordshire Rail. Co.* (1860), 3 E. & E. 392. This method of valuation is described at p. 28, *ante*. In valuing stations, the value of advertisement hoardings (see pp. 18, 19, *ante*), bookstalls (see p. 13, *ante*), and coal merchants' yards (p. 13, *ante*) are included or excluded according as the railway company itself is or is not rateable in respect of them. The value of station hotels and refreshment rooms is usually excluded (*North Eastern Railway* v. *York Union*, [1900] 1 Q. B. 733). As to the method of valuing the latter, see *Clark* v. *Fisherton-Angar* (1880), 6 Q. B. D. 139; see p. 28, *ante*. As to a station into which a second company has running powers, see p. 35, *post*. As to the nature of running powers, see title RAILWAYS AND CANALS, Vol. XXIII., pp. 701 *et seq.*

(*e*) *R.* v. *London and South Western Rail. Co.* (1842), 1 Q. B. 558; *R.* v. *Grand Junction Rail. Co.* (1844), 4 Q. B. 18; see p. 27, *ante*. The land cannot be valued as if the permanent way were not upon it (*Great Western Rail. Co.* v. *Melksham Union* (1870), 34 J. P. 692).

(*f*) As to leased lines, branch lines, and link lines, see p. 34, *post*; as to lines subject to running powers, see p. 35, *post*.

(*g*) *R.* v. *London, Brighton and South Coast Rail. Co.* (1851), 15 Q. B. 313; *R.* v. *Great Western Rail. Co.* (1852), 15 Q. B. 379, 1085.

(*h*) The practice on this point is different in the valuation of waterworks (see p. 35, *post*) and gasworks (see p. 35, *post*), though otherwise the principles of valuation are the same.

(*i*) It is not correct to take the total gross receipts of the whole system and allocate them to the parish according to mileage (*R.* v. *London, Brighton and South Coast Rail. Co.* (1851), 15 Q. B. 313). The fares paid for the

SECT. 2. Rateable Value of Special Classes of Property.

period, prior to the date of the rate, for which this can be conveniently done (*k*). The receipts only include tolls actually taken (*l*) in respect of transit over the line that is rated (*m*); and they include so much of the terminal charge as is attributable to the parochial portion of the line upon a mileage apportionment (*n*). The gross receipts may be proved by the production of written statements on behalf of the company, subject to verification and to cross-examination (*o*).

Deductions from gross receipts :—

(i.) working expenses;

54. From the gross receipts earned in the parish, a portion, allocated to the particular parish, of the working expenses throughout the system must be deducted. These expenses include the actual expenses of running the trains and administering the traffic, the expenses of repairing the rolling stock (*p*), the expenses of renewing, or providing for the depreciation of, the rolling stock (*q*), and the Government duty on passenger tickets (*r*).

(ii.) rates;

Rates upon the rateable value ultimately arrived at have also to be deducted. No deduction of income tax is admissible (*s*).

transit of passengers, and the freights paid for the transit of parcels, goods, and minerals, over the parochial portion of the line are estimated by apportioning according to miles the total fares and freights actually paid for the transit of those passengers and those parcels, goods, and minerals. Where there is a terminal passenger or goods station in the parish, the length of line over which the transit is made in the parish is usually calculated to the buffer stops; but in certain circumstances it is not wrong to take an average point in the parish and calculate the distances to that point (*Great Northern Rail. Co.* v. *Edmonton Union* (1905), 1 Konstam's Rating Appeals 186, 197, 199, 207, 208). If empty wagons return by another line, a deduction should be made from the gross receipts in the parish for the expense of returning the empty wagons (*Great Northern Rail. Co.* v. *Hunslet Union* (1911), 105 L. T. 544).

(*k*) *R.* v. *London, Brighton and South Coast Rail. Co.* (1851), 15 Q. B. 313, 367.

(*l*) And nothing can be added for tolls which the company has power to take but do not (*R.* v. *Stockton and Darlington Rail. Co.* (1863), 8 L. T. 422); but where another company enjoys running powers toll-free over the line, a sum is added for the value of those powers; see p. 35, *post*. As to the nature of running powers, see title RAILWAYS AND CANALS, Vol. XXIII., p. 701.

(*m*) *R.* v. *St. Pancras Vestry* (1863), 3 B. & S. 819.

(*n*) *R.* v. *Eastern Counties Rail. Co.* (1863), 4 B. & S. 58. Where the terminals are owned by two companies, half the sum earned is attributed to each company (*Manchester, Sheffield and Lincolnshire Rail. Co.* v. *Caistor Union Guardians, Same* v. *Glandford Brigg Union Guardians* (1874), 2 Ry. & Can. Tr. Cas. 53). As to terminal charges, see title CARRIERS, Vol. IV., p. 83. Cartage and delivery charges do not form a portion of the gross receipts earned by means of the line, and are therefore excluded (*Manchester, Sheffield and Lincolnshire Rail. Co.* v. *Caistor Union Guardians, Same* v. *Glandford Brigg Union Guardians, supra;* compare *Buckfastleigh and Totnes Rail. Co.* v. *South Devon Rail. Co.* (1874), 1 Ry. & Can. Tr. Cas. 321).

(*o*) Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 48.

(*p*) It is doubtful whether the company is entitled to include in the working expenses a profit on the expenses of such repairs when these are done by the company; see *London and North Western Rail. Co.* v. *Wigan Union Guardians* (1876), 2 Ry. & Can. Tr. Cas. 240. As to the liability of a railway company for maintenance of rolling stock, see title RAILWAYS AND CANALS, Vol. XXIII., pp. 690 *et seq.*

(*q*) As to the method of calculation, see *Great Eastern Rail. Co.* v. *Haughley* (1866), L. R. 1 Q. B. 666.

(*r*) See title RAILWAYS AND CANALS, Vol. XXIII., pp. 638, 639.

(*s*) Compare *R.* v. *Southampton Dock Co.* (1851), 14 Q. B. 587, which is

A deduction is made for a portion, allocated to the parish, of the rent hypothetically paid for the use of the stations and other indirectly productive portions of the whole system, and rates payable in respect thereof (*t*).

(iii.) station fund.

A loss incurred upon a branch line cannot be deducted (*u*), nor, in calculating the profits of a main line, is a deduction to be made in respect of such portion of them as is due to the use of branch lines as feeders (*a*).

Losses and profits in respect of branch line.

55. The amount remaining after the foregoing deductions have been made represents the net profit divisible between landlord and tenant. The portion of that amount which the hypothetical tenant would require to retain as his own share of the profits is calculated by estimating the amount of capital required to work the whole system (*b*), allocating a portion of the last-mentioned amount to the particular parish, and putting such a percentage thereon as is considered sufficient to remunerate the tenant, to indemnify him for the risk, and to enable him to pay interest on borrowed capital (*c*).

Method of arriving at gross estimated rental and rateable value.

The portion of the net profits which the hypothetical tenant would not require to retain as his own share thereof represents the sum which he might be expected to pay as rent for the whole undertaking, that is, the gross estimated rental. From it must be made the statutable deductions (*d*) in order to arrive at the rateable value.

Deduction of "tenant's share."

followed on this point in preference to *R.* v. *Great Western Rail. Co.* (1846), 6 Q. B. 179, 205.

(*t*) This deduction is made irrespectively of the existence or non-existence of stations and other indirectly productive portions of the line in the parish, for the reason that trade cannot be carried on upon the running line unless the system is provided with stations, sidings and the like.

(*u*) *R.* v. *Great Western Rail. Co., supra.*

(*a*) *Great Central Railway* v. *Banbury Union, Sheffield Union* v. *Great Central Railway*, [1909] A. C. 78. There is, in general, no addition to the rateable value of branch lines on this account; see *Great Central Railway* v. *Banbury Union, Sheffield Union* v. *Great Central Railway, supra;* and see p. 34, *post.*

(*b*) This is usually done by valuing the rolling stock and other chattels actually used by the company, including what is necessary as a stand-by, at their actual value at the time (*R.* v. *Great Western Rail. Co., supra; R.* v. *North Staffordshire Rail. Co.* (1860), 3 E. & E. 392). Machinery which forms part of a rateable hereditament ought not to be included (*R.* v. *North Staffordshire Rail. Co., supra,* following *R.* v. *Southampton Dock Co.* (1851), 14 Q. B. 587; and see p. 29, *ante*). Since the decision in *Kirby* v. *Hunslet Assessment Committee*, [1906] A. C. 43, where Lord MACNAGHTEN, at p. 50, expressly based his opinion on *R.* v. *Southampton Dock Co., supra,* it is difficult to say how much machinery ought to be included in the tenant's capital. But it seems clear that no such machinery ought to be included where it has already been included in the assessment of the indirectly productive portions of the railway undertaking. It is usual to include in the tenant's capital a sum for cash in hand or floating capital; but it is a question of fact whether this should be allowed or not (*Great Eastern Rail. Co.* v. *Haughley* (1866), L. R. 1 Q. B. 666).

(*c*) The amount of the percentage is a question of fact (*R.* v. *Great Western Rail. Co., supra*); 17½ per cent. has been a figure frequently fixed of late years, but the most recent decisions of quarter sessions have fixed 16½ per cent. and 15 per cent.

(*d*) As to the meaning of statutable deductions, see p. 30, *ante.*

SECT. 2. Rateable Value of Special Classes of Property.

"Statutable deductions."

56. Where the actual average expenses of the repairs and maintenance or renewal of the line in the parish can be ascertained, this is the proper way of estimating the statutable deductions (*e*). The whole of the expenses in respect of a bridge or tunnel are usually deducted in the parish in which it stands (*f*). A renewal fund is allowed, although the company may not actually set one aside (*g*).

Application of parochial principle to branch line or link line.

57. A branch line, or link line, forming part of a large railway system is rated upon a basis only of the profits actually earned upon the branch line in the parish, although a great part of the commercial value of the branch line consists in its use as a feeder to the rest of the system (*h*); but a branch line for the tenancy of which several companies would compete, or which forms a link between several systems, is not necessarily rated upon that strictly limited basis (*i*).

(*e*) Sometimes, however, the expenses incurred over the whole system, or over a section of it which includes the parochial portion, are taken and allocated to the parish according to train-miles run. They are not to be apportioned according to linear miles (*London and North Western Rail. Co.* v. *Harborne Overseers* (1870), 34 J. P. 644).

(*f*) In spite of what is said to the contrary in *R.* v. *Great Western Rail. Co.* (1852), 15 Q. B. 1085, 1089. As to the liability of a railway company in respect of bridges and tunnels, see title RAILWAYS AND CANALS, Vol. XXIII., pp. 655 *et seq.*, 686.

(*g*) *R.* v. *London, Brighton and South Coast Rail. Co.* (1851), 15 Q. B. 313; *R.* v. *Great Western Rail. Co., supra*, at p. 1087; see p. 30, *ante*.

(*h*) *Great Central Railway* v. *Banbury Union, Sheffield Union* v. *Great Central Railway*, [1909] A. C. 78, which adopted the "parochial principle" laid down in *R.* v. *London, Brighton and South Coast Rail. Co.* (1851), 15 Q. B. 313, and followed and affirmed the principles laid down with regard to branch and link lines in the following cases, namely:—*Newmarket Rail. Co.* v. *St. Andrew the Less, Cambridge, Overseers* (1854), 3 E. & B. 94; *Great Eastern Rail. Co.* v. *Haughley* (1866), L. R. 1 Q. B. 666; *R.* v. *Llantrissant* (1869), L. R. 4 Q. B. 354. In *Great Central Railway* v. *Banbury Union, Sheffield Union* v. *Great Central Railway, supra*, the House of Lords declined to follow *South Eastern Rail. Co.* v. *Dorking Overseers* (1854), 3 E. & B. 491, and the line of cases cited therewith; see note (*i*), *infra*.

(*i*) Lines of the classes here described were expressly excepted from the principle laid down in *Great Central Railway* v. *Banbury Union, Sheffield Union* v. *Great Central Railway, supra, per* Lord LOREBURN, L.C., at p. 87, *per* Lord DUNEDIN, at p. 94. Presumably, therefore, in valuing lines of this class it is permissible to have regard to the element of competition, the value of the line as a link or feeder, and to such matters as rent paid for the line, as was done in *R.* v. *Eastern Counties Rail. Co.* (1854), 23 L. J. (M. C.) 96, n.; *South Eastern Rail. Co.* v. *Dorking Overseers, supra; London and North Western Rail. Co.* v. *Cannock Overseers* (1863), 9 L. T. 325; *R.* v. *London and North Western Rail. Co.* (1874), L. R. 9 Q. B. 134; *London and North Western Rail. Co.* v. *Irthlingborough* (*Churchwardens*) (1876), 35 L. T. 327; *East London Railway Joint Committee* v. *Bermondsey and Greenwich Assessment Committees* (1907), 2 Konstam's Rating Appeals, 634; *East London Railway Joint Committee* v. *Greenwich Union Assessment Committee* (1912), 76 J. P. 318; *London and North Western Rail. Co.* v. *Thrapston Union Assessment Committee* (1912), 29 T. L. R. 21. It was decided, however, in *Great Central Rail. Co.* v. *Banbury Union, Sheffield Union* v. *Great Central Railway, supra*, that the evidence of structural cost was not admissible in ascertaining the value of a link line. In *North and South Western Junction Rail. Co.* v. *Brentford Union Assessment Committee* (1888), 13 App. Cas. 592, it was laid down

Tolls and sums paid in respect of running powers.

58. Where one railway company is in rateable occupation (*k*) of a line over which another company has running powers, and tolls are paid by the latter company to the former, the tolls are included as part of the gross receipts (*l*). Where the latter company makes to the occupying company a fixed annual payment, that sum is brought into the account, whether or no it represents the true value of the running powers (*m*). Where no payment is made, a sum which represents the value of the running powers must be brought into the account (*n*).

SUB-SECT. 2.—*Waterworks, Gasworks, and Electrical Undertakings.*

Principle of parochial apportionment.

59. In calculating the rateable value of that portion of a gas (*o*) or water (*p*) undertaking which is situated in a parish, it is the practice first to ascertain the rateable value of the whole undertaking and afterwards to apportion the rateable value so ascertained amongst the various parishes concerned (*q*), care being taken to see that the aggregate rateable value of the parts is not greater than that of the whole (*r*).

Basis of valuation of whole undertaking.

60. The valuation of the undertaking is based upon the profits which are capable of being made and are made thereby (*s*). The gross receipts which form the starting-point of the calculation are usually those shown in the company's accounts for the account year concluded last before the making of the rate (*t*). Where the undertaking is carried on by a local authority, the gross receipts for

that the supposed demand of an exorbitant rent by the owner of a portion of a railway line from the tenant of the rest can never be an element in the rateable value of the portion in question. In *London and North Western Rail. Co.* v. *Ampthill Union* (1907), 2 Konstam's Rating Appeals, 378, C. A., it was held that evidence of a rent fixed more than fifty years before the making of the rate was, by reason of that interval of time, too remote to be admissible; and in assessing a line of the classes excepted by the decision in *Great Central Railway* v. *Banbury Union, Sheffield Union* v. *Great Central Railway*, [1909] A. C. 78, the inquiry must at any rate be limited by the two cases last cited.

(*k*) As to the test of rateable occupation in such cases, see p. 13, *ante*.

(*l*) *R.* v. *St. Pancras Vestry* (1863), 3 B. & S. 810.

(*m*) *Altrincham Union Assessment Committee* v. *Cheshire Lines Committee* (1885), 15 Q. B. D. 597, C. A. This is also the rule in the cases of a station (*R.* v. *Fletton Overseers* (1861), 3 E. & E. 450), and lines surrounding a dock (*Sculcoates Union* v. *Kingston-upon-Hull Dock Co.*, [1895] A. C. 136).

(*n*) *R.* v. *London, Brighton and South Coast Rail. Co.* (1851), 15 Q. B. 313; see *Midland Rail. Co.* v. *Badgworth Overseers* (1864), 11 Jur. (N. S.) 14. But apparently the sum to be brought into account is measured by the value of the running powers to the occupying company, and not to the company which enjoys the running powers (*Great Western Rail. Co.* v. *Badgworth* (1867), L. R. 2 Q. B. 251).

(*o*) As to gas undertakings, see title GAS, Vol. XV., pp. 305 *et seq.*

(*p*) As to water undertakings, see title WATER SUPPLY.

(*q*) *R.* v. *Mile End Old Town Overseers* (1847), 10 Q. B. 208; *R.* v. *West Middlesex Waterworks Co.* (1859), 1 E. & E. 716; *Chelsea Waterworks Co.* v. *Putney Overseers* (1860), 6 Jur. (N. S.) 940; *R.* v. *Sheffield United Gaslight Co.* (1863), 32 L. J. (M. C.) 169.

(*r*) *R.* v. *West Middlesex Waterworks Co., supra.*

(*s*) *R.* v. *Sheffield United Gaslight Co., supra.*

(*t*) Compare *R.* v. *London, Brighton and South Coast Rail. Co., supra*, as to railways; and see p. 32, *ante*.

SECT. 2. Rateable Value of Special Classes of Property.

this purpose include the actual payments for water (*u*) or gas and any water rates received (*v*).

Deductions from gross receipts of whole undertaking.

61. When the gross receipts have been ascertained, the rateable value of the undertaking is calculated by making deductions of the same kind as are made in calculating the rateable value of the parochial portion of a running line of railway (*a*), save that there is no deduction for a "station fund" (*b*). In the case of a water undertaking, the "tenant's share" is, however, frequently estimated by applying a percentage to the gross receipts, on the theory that a tenant would anticipate retaining such a percentage thereof for himself (*c*). In the case of a gas company (*d*) it is proper to include in the tenant's capital the value of the meters (*e*), as well as of "slot" meters, stoves and fittings, where the company conducts its business by the use and hiring out of those chattels (*f*).

Apportionment of total rateable value between parishes.

62. When the rateable value of the whole undertaking has been estimated, it is necessary, in order to ascertain the rateable value of the portion situate in a given parish, first to deduct the rateable value of the indirectly productive portion of the whole undertaking (*g*): the remainder is the rateable value of the directly productive

(*u*) *R.* v. *Longwood Overseers* (1852), 17 Q. B. 871; *Liverpool Corporation* v. *Wavertree Overseers* (1875), 2 Ex. D. 55, n.; *Worcester Corporation* v. *Droitwich Assessment Committee* (1876), 2 Ex. D. 49, C. A. These cases laid down that where the charges that could be made by a local authority were restricted by statute, it was wrong to add anything on account of the larger charges that might be made by an unrestricted tenant. In consequence, it was held that the effect of such a restriction might be to reduce the rateable value of such an undertaking to *nil* (*Peterborough Corporation* v. *Stamford Union* (1883), 31 W. R. 949). It is doubtful, however, if any of these cases can stand in view of the subsequent decisions in *West Bromwich School Board* v. *West Bromwich Overseers* (1884), 13 Q. B. D. 929; *R.* v. *London School Board* (1886), 17 Q. B. D. 738, C. A.; *London County Council* v. *Erith* (*Churchwardens*) *and Dartford Union Assessment Committee*, [1893] A. C. 562 (see p. 16, *ante*), that schools and sewage works, carried on by local authorities who could make no profit, were rateable at their full value to an ordinary hypothetical tenant. *R.* v. *Kentmere* (*Inhabitants*) (1851), 17 Q. B. 551, appears to be more in accord with the later decisions.

(*v*) *Dewsbury and Heckmondwike Waterworks Board* v. *Penistone Union Assessment Committee* (1886), 17 Q. B. D. 384, C. A. But a sum raised by the general district rate and paid into the waterworks account cannot be included in the gross receipts for this purpose (*Merthyr Tydfil Local Board of Health* v. *Merthyr Tydfil Union Assessment Committee*, [1891] 1 Q. B. 186).

(*a*) See p. 32, *ante*.

(*b*) As to the "station fund," see p. 33, *ante*. The value of the indirectly productive works (as to which see p. 30, *ante*; pp. 37, 38, *post*) becomes important, however, on the question of apportionment; see the text, *infra*.

(*c*) And because the carrying on of a water undertaking usually requires such a comparatively small amount of loose capital that it would be fallacious to calculate the tenant's share by a percentage on that amount.

(*d*) See *R.* v. *Sheffield United Gaslight Co.* (1863), 32 L. J. (M. C.) 169.

(*e*) *R.* v. *Lee* (1866), L. R. 1 Q. B. 241. But the value of retorts, gasholders, and other machinery of that class is not included in the tenant's capital (*ibid.*).

(*f*) *Ipswich Gas Light Co.* v. *Ipswich Union* (1907), 2 Konstam's Rating Appeals, 699.

(*g*) As to the manner of ascertaining the rateable value of the indirectly productive works, see pp. 37, 38, *post*.

mains and pipes throughout the undertaking, and this is apportioned among the various parishes according to the proportion which the gross or net receipts earned in each parish bears to the gross or net receipts earned on the whole undertaking (*h*). The rateable value of the indirectly productive portion situated in each parish is separately ascertained (*i*) and added to the value of the directly productive portion in the parish ascertained as above mentioned (*j*).

Indirectly productive portions of water undertaking.

63. The indirectly productive portions of a water undertaking include reservoirs, buildings, pumping stations, and those mains which are used for the transmission of the water to the distributing mains and service pipes (*k*). The rateable value of these portions is ordinarily ascertained upon the principle of applying a percentage to their structural or capital value (*l*). Where the indirectly productive works have been constructed in excess of existing requirements in order to provide for future needs, it is proper to take this into account either by applying a lower percentage to the capital value (*m*) or by applying the full percentage to a reduced capital value (*n*). The capital value for the present purpose includes expenditure incurred for the reinstatement of persons whose reinstatement was a condition of acquiring the land (*o*).

Where land containing a spring (*p*) or an intake from a river (*q*) or serving as a gathering ground (*r*) is used for the supply of water in another parish, the additional value due to such user must be included in ascertaining the rateable value of that land.

(*h*) *R.* v. *Mile End Old Town Overseers* (1847), 10 Q. B. 208, and the cases cited therewith in note (*q*), p. 35, *ante*, are the authorities for this process. Whether the gross or net receipts shall be taken as the basis of apportionment is a question of fact for quarter sessions (*Metropolitan Water Board* v. *City of London Union Assessment Committee* (1909), 73 J. P. 142).

(*i*) See p. 36, *ante*; p. 38, *post*.

(*j*) After this process has been carried out there is usually no objection to the whole parochial part of the undertaking being assessed in one entry; see, *e.g.*, *R.* v. *West Middlesex Waterworks Co.* (1859), 1 E. & E. 716; compare *North Eastern Railway* v. *York Union*, [1900] 1 Q. B. 733.

(*k*) *R.* v. *Mile End Old Town Overseers*, *supra*; *R.* v. *West Middlesex Waterworks Co.*, *supra*.

(*l*) *R.* v. *West Middlesex Waterworks Co.*, *supra*; see also *R.* v. *London School Board* (1886), 17 Q. B. D. 738, C. A., and the other cases cited therewith in note (*u*), p. 36, *ante*.

(*m*) *R.* v. *South Staffordshire Waterworks Co.* (1885), 16 Q. B. D. 359, C. A.

(*n*) *Liverpool Corporation* v. *Llanfyllin Union Assessment Committee*, [1899] 2 Q. B. 14, as reported 78 L. T. 835; reversed (1899), 80 L. T. 667, C. A. The same principle of applying a percentage to the "effective capital value" only has been adopted where a portion of the capital expenditure was ineffective for reasons other than that stated in the text, *supra* (*Bradford Corporation* v. *Keighley Union* (1906), 2 Konstam's Rating Appeals, 517).

(*o*) *Liverpool Corporation* v. *Llanfyllin Union Assessment Committee*, *supra*; compare *Bradford Corporation* v. *Keighley Union*, *supra*.

(*p*) *R.* v. *New River Co.* (1813), 1 M. & S. 503; compare *R.* v. *Miller* (1777), 2 Cowp. 619.

(*q*) *New River Co.* v. *Hertford Union*, [1902] 2 K. B. 597, C. A.

(*r*) *Liverpool Corporation* v. *Chorley Union Assessment Committee and Withnell Overseers*, [1912] 1 K. B. 270, C. A.

SECT. 2. Rateable Value of Special Classes of Property.

Indirectly productive portions of gas undertaking.

64. The indirectly productive portions of a gas undertaking include, besides those portions of the mains which carry the gas to the distributing mains and service pipes, the gasworks as equipped with gasholders, retorts, purifiers, steam engines and boilers (*s*). Their rateable value is ascertained in the same way as that of similar portions of water undertakings (*t*).

Valuation of electrical undertakings.

65. Undertakings for the supply of electrical power or light (*u*) are valued, and their rateable value is apportioned among various parishes, upon similar principles to those which are applied to gas undertakings (*x*). It is admissible to apply similar principles to electrical tramway undertakings (*a*).

SUB-SECT. 3.—*Canals.*

Methods of ascertaining rateable value.

66. The rateable value of a canal (*b*) is calculated upon the same principles, speaking generally, as are applied to a railway (*c*) or a waterworks (*d*) undertaking. The rateable value of the portion in any particular parish may be ascertained separately (*e*) upon

(*s*) *R.* v. *Lee* (1866), L. R. 1 Q. B. 241, where the machinery and plant described in the text, *supra*, were held not to form part of the tenant's capital. The remarks made at p. 29, *ante*, as to the difficulty since the decision in *Kirby* v. *Hunslet Assessment Committee*, [1906] A. C. 43, of determining what portions of the equipment are to be taken into account in rating a railway undertaking, and what portions to be included in the tenant's capital, appear to apply equally to gasworks.

(*t*) See p. 37, *ante*; and for an example of a gasworks valuation, see *R.* v. *Lee*, *supra*.

(*u*) See title ELECTRIC LIGHTING AND POWER, Vol. XII., pp. 541 *et seq.*

(*x*) This has been the practice at quarter sessions, and it has not been challenged in the superior courts.

(*a*) At first sight, tramways appear to have more in common with railways than with waterworks or gasworks; but where it was found impossible, owing to the overlapping of fares, to ascertain with sufficient accuracy the gross receipts in the parish, a valuation of the whole undertaking and an apportionment of rateable value to the parish, which had been made practically according to the methods employed with regard to waterworks and gasworks, were held not to be inappropriate: the apportionment having been made according to the numbers of car-miles run in each parish (*London United Tramways* (1901), *Ltd.* v. *Brentford Union* (1907), 2 Konstam's Rating Appeals, 410; 71 J. P. 249, C. A.). This difficulty in ascertaining the gross receipts probably arises with regard to most tramway undertakings. For a valuation of tramways on somewhat similar methods to those which are applied to railways see *Melbourne Tramway and Omnibus Co.* v. *Fitzroy Corporation*, [1901] A. C. 153, P. C.

(*b*) In the absence of any special statutory provision (see p. 24, *ante*), the land is to be valued as used for a canal (*R.* v. *St. Peter the Great, Worcester* (*Inhabitants*) (1826), 5 B. & C. 473). As to canal undertakings, see title RAILWAYS AND CANALS, Vol. XXIII., pp. 779 *et seq.*

(*c*) See pp. 30 *et seq.*, *ante*. A rent received by a canal company as owners, and not as occupiers of the canal undertaking, was excluded from consideration in *R.* v. *Lapley Overseers* (1868), 9 B. & S. 568; compare the cases as to railways cited in notes (*h*), (*i*), p. 34, *ante*.

(*d*) See p. 35, *ante*.

(*e*) Because the receipts earned in the parish afford a measure of the rent which a tenant would pay for the parochial portion of the canal (*R.* v. *Milton* (1819), 3 B. & Ald. 112; *R.* v. *Palmer* (1823), 1 B. & C. 546; *R.* v. *Portmore* (*Earl*) (1823), 1 B. & C. 551; *R.* v. *Trent and Mersey Navigation Co.* (1825), 4 B. & C. 57).

a basis of the gross receipts actually earned by the passing of the traffic through that parish; or the rateable value of the whole may be first ascertained and then apportioned among the various parishes according to the gross receipts earned in each (*f*).

Dues and tolls.

67. Lock dues are included in the receipts of the parish where the lock is (*g*). But a toll charged on goods entering the canal, irrespective of their destination, is divided among all the parishes through which the canal runs (*h*).

Proof of gross receipts.

The gross receipts may be proved by affidavit (*i*).

Deductions from gross receipts.

68. The working expenses incurred in the parish must be deducted from the gross receipts in the parish (*k*); such expenses include the poor rate and the expense of filling the canal with water (*l*). The share of profits which the tenant would require for himself must be deducted (*m*).

Expenses of repair and renewal.

The expenses of repair and renewal (*n*), if uniform over the whole length of the canal, may be calculated at a mileage proportion of the whole of such expenses (*o*); but any special expenses incurred on this account in the parish must be deducted in the parish (*p*).

SUB-SECT. 4.—*Harbours and Docks.*

Rateable value calculated on basis of gross receipts.

69. The rateable value of a harbour or dock undertaking (*q*) is calculated upon a basis of gross receipts, according to the same

(*f*) In either case the gross receipts must be actually ascertained for the parish; it is not sufficient to fix a figure for them by a mere apportionment, whether according to the acreage or otherwise, of the gross receipts earned by the whole undertaking (*R.* v. *Kingswinford (Inhabitants)* (1827), 7 B. & C. 236, the principle of which case has been followed and affirmed in connection with railways; see p. 31, *ante*; *R.* v. *Chaplin* (1831), 1 B. & Ad. 926; *R.* v. *Woking (Inhabitants)* (1835), 4 Ad. & El. 40).

(*g*) *R.* v. *Lower Mitton (Inhabitants)* (1829), 9 B. & C. 810. Dues, though taken at a lock, may be unconnected with the occupation of it, and such tolls are not taken into account in rating (*R.* v. *Aire and Calder Navigation Co.* (1832), 3 B. & Ad. 533). On the other hand, the payment by the company of dues such as for compensation for loss of water does not affect the value of the occupation and is not a cause of deduction from the gross receipts (*R.* v. *Woking (Inhabitants)*, *supra*).

(*h*) *R.* v. *Oxford Canal Co.* (1825), 4 B. & C. 74.

(*i*) Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 45), s. 48.

(*k*) *R.* v. *Kingswinford (Inhabitants)*, *supra*.

(*l*) *R.* v. *Oxford Canal Co.* (1829), 10 B. & C. 163.

(*m*) *R.* v. *Oxford Canal Co.* (1825), 4 B. & C. 74; *R.* v. *Bridgewater's (Duke) Trustees* (1829), 9 B. & C. 68; *R.* v. *Tomlinson* (1829), 9 B. & C. 163; *R.* v. *Lower Mitton (Inhabitants)* (1829), 9 B. & C. 810; *R.* v. *Woking (Inhabitants)*, *supra*. As to the method of calculating the tenant's share, see p. 32, *ante*.

(*n*) See pp. 30, 34, *ante*.

(*o*) *R.* v. *Woking (Inhabitants)*, *supra*.

(*p*) As the expenses of repairing a lock, or a difficult part of the canal banks (*R.* v. *Oxford Canal Co.* (1829), 10 B. & C. 163). Subsequently it was held that these special expenses should be "miled out" like the rest (*R.* v. *Coventry Canal Navigation Co.* (1859), 1 E. & E. 572, following *R.* v. *Great Western Rail. Co.* (1852), 15 Q. B. 1085); but the two latter cases do not appear to represent the law as it stands since *London and North Western Rail. Co.* v. *Harborne Overseers* (1870), 34 J. P. 644.

(*q*) As to harbour and dock undertakings generally, see title WATERS AND WATERCOURSES.

SECT. 2. Rateable Value of Special Classes of Property.

general principles as are applied to a railway (*r*) or a waterworks (*s*) undertaking.

The gross receipts for this purpose include only those tolls or dues which are earned by the occupation of the harbour or dock, or of which the occupation of land is the sole meritorious cause (*t*); they do not include any dues which are payable in respect of ships or goods entering the harbour, irrespective of whether they enter any dock or any part of the harbour in the rateable occupation of the persons entitled to the dues (*u*).

Undertakings connected with railways.

Special considerations may apply in valuing docks and wharves connected with railways (*a*).

Deductions from gross receipts.

70. The deductions made are generally of the same nature as in the case of railways (*b*), and include a deduction for the share of the profits which the tenant would require to retain for himself (*c*), except in the case of harbours and docks in the hands of statutory

(*r*) See pp. 30 *et seq.*, *ante*.

(*s*) See p. 35, *ante*.

(*t*) *R.* v. *Durham* (*Earl*) (1859), 5 Jur. (N. S.) 1306; *R.* v. *Berwick Assessment Committee* (1885), 16 Q. B. D. 493; *Swansea Harbour Trustees* v. *Swansea Union Assessment Committee* (1907), 1 Konstam's Rating Appeals, 250; 71 J. P. 497, H. L. As to the bearing of these cases and those cited in note (*u*), *infra*, on the question of rateable occupation, see p. 9, *ante*.

(*u*) Such dues are tolls in gross, and not rateable (*R.* v. *Nicholson* (1810), 12 East, 330; see p. 8, *ante*); hence their exclusion in rating a harbour or dock (*Lewis* v. *Swansea Overseers* (1855), 5 E. & B. 508; *Ipswich Dock Commissioners* v. *St. Peter's, Ipswich, Overseers* (1866), 7 B. & S. 310; *Faversham Navigation Commissioners* v. *Faversham Union Assessment Committee* (1867), 31 J. P. 822; *New Shoreham Harbour Commissioners* v. *Lancing* (1870), L. R. 5 Q. B. 489; *R.* v. *Berwick Assessment Committee, supra*; *Blyth Harbour Commissioners* v. *Newsham and South Blyth (Churchwardens) and Tynemouth Union Assessment Committee*, [1894] 2 Q. B. 293, 675, C. A.; *Swansea Harbour Trustees* v. *Swansea Union Assessment Committee, supra*). *A fortiori*, dues of this kind paid in respect of ships which do not in fact enter a dock or other portion in rateable occupation are excluded (*R.* v. *Bristol Dock Co.* (1841), 1 Q. B. 535; *R.* v. *Kingston-upon-Hull Dock Co.* (1845), 7 Q. B. 2).

Dues of the nature described in the text, *supra*, are often called "harbour dues" or "harbour rates"; but the fact that dues are imposed under such a name is not necessarily conclusive of their nature; and a due called a "harbour rate" in a special Act may, nevertheless, be leviable in respect of entry into a particular dock (*Swansea Harbour Trustees* v. *Swansea Union Assessment Committee, supra*).

(*a*) Questions arising upon such valuations have been decided in *R.* v. *Dowlais Iron Co.* (1868), 10 B. & S. 208; *R.* v. *Rhymney Rail. Co.* (1869), L. R. 4 Q. B. 276 (see p. 28, *ante*); *Sutton Harbour Improvement Co.* v. *Plymouth Guardians* (1890), 63 L. T. 772; *Sculcoates Union* v. *Kingston-upon-Hull Dock Co.*, [1895] A. C. 136.

(*b*) See pp. 32, 33, *ante*. The deduction for working expenses includes directors' fees and the expenses of working a tug (*R.* v. *Southampton Docks Co.* (1851), 14 Q. B. 587). Where, however, a statutory undertaking is managed by unpaid commissioners, no deduction can be made for imaginary directors' fees (*R.* v. *Tyne Improvement Commissioners* (1862), 6 L. T. 489).

(*c*) The tenant's capital includes the value of a tug (*R.* v. *Southampton Docks Co., supra*); but not of fixed plant (see p. 33, *ante*), nor of "travelling" hydraulic cranes (*London and India Docks* v. *Poplar Union* (1900) 83 L. T. 371).

bodies who are precluded by statute from making a profit out of them (*d*).

Application of parochial principle.

71. Where a harbour or dock undertaking extends into more than one parish, the rateable value of a parochial portion is determined upon a basis of the gross receipts earned in the parish, where these can be ascertained (*e*).

Warehouses.

72. Warehouses in fact occupied by the occupiers of the docks, but not necessarily so occupied, are rated separately from the docks (*f*).

SUB-SECT. 5.—*Licensed Property.*

Consideration of existence of licence.

73. In valuing licensed property (*g*) it is necessary to take into account the value due to the existence of the licence, because the trade which the occupier is thereby permitted to carry on can only be carried on upon the premises rated (*h*). Consequently, an increase in the amount of licence duty which a tenant of the house must bear will, unless there are countervailing circumstances, have the effect of decreasing the rateable value of the house (*i*).

No account taken of "tying" covenant.

Where the occupier is bound by a "tying" covenant to take his liquor, or some part of it, from the landlord, the "tied" house is to be valued as if it were not affected by any such covenant (*j*).

(*d*) *Mersey Docks* v. *Liverpool* (1873), L. R. 9 Q. B. 84.

(*e*) *Mersey Docks* v. *Liverpool* (1872), L. R. 7 Q. B. 643; *Sculcoates Union* v. *Kingston-upon-Hull Dock Co.*, [1895] A. C. 136. There appears to be no objection to the rateable value in such cases being determined in practice by first ascertaining the rateable value of the whole undertaking and then apportioning the rateable value so ascertained according to the gross or net receipts earned in the parish, as is done in the case of waterworks (see p. 35, *ante*). Where the gross receipts in the parish cannot be approximately ascertained, it appears that the rateable value may legitimately be apportioned according to acreage (*R.* v. *Kingston-upon-Hull Dock Co.* (1852), 18 Q. B. 325).

(*f*) Whether the docks are occupied by a statutory body (*Mersey Docks and Harbour Board* v. *Birkenhead Overseers* (1873), L. R. 8 Q. B. 445) or by a trading company (*London and India Docks* v. *Poplar Union* (1900), 83 L. T. 371).

(*g*) As to licensed property generally, see title INTOXICATING LIQUORS, Vol. XVIII., pp. 8 *et seq.* As to leases of licensed premises, see title LANDLORD AND TENANT, Vol. XVIII., pp. 571 *et seq.*

(*h*) *R.* v. *Bradford* (1815), 4 M. & S. 317; *West Middlesex Waterworks Co.* v. *Coleman*, *Coleman* v. *West Middlesex Waterworks Co.* (1885), 14 Q. B. D. 529; *Cartwright* v. *Sculcoates Union*, [1900] A. C. 150; *R.* v. *Shoreditch Assessment Committee, Ex parte Morgan*, [1910] 2 K. B. 859, C. A.

(*i*) *R.* v. *Shoreditch Assessment Committee, Ex parte Morgan, supra.* The compensation levy payable in respect of the house is not, however, admissible as a deduction between gross estimated rental and rateable value (*Waddle* v. *Sunderland Union*, [1908] 1 K. B. 642, C. A.; see title INTOXICATING LIQUORS, Vol. XVIII., p. 75; and see p. 30, *ante*). *Quære*, whether it should be taken into account in estimating the gross estimated rental, for, in the case of a tenancy for one year only, the tenant bears no part of it; see title INTOXICATING LIQUORS, Vol. XVIII., p. 74, note (*g*).

(*j*) *I.e.*, as if it were a "free" house (*Sunderland Overseers* v. *Sunderland Union* (1865), 18 C. B. (N. S.) 531; *Bradford-on-Avon Assessment Committee* v. *White*, [1898] 2 Q. B. 630, overruling in effect *Allison* v. *Monkwearmouth Shore Overseers* (1854), 4 E. & B. 13); nor is the value of the "tie" to be included in valuing the brewery (*Sunderland Overseers* v. *Sunderland Union, supra*). The rateable value of a tied house is sometimes arrived

SECT. 2. Rateable Value of Special Classes of Property.

The simplest method of valuing a public-house is by ascertaining the rents which are prevalent in the neighbourhood for "free" houses; but "free" houses are comparatively few, and it is therefore rarely possible to apply this test. Evidence of the trade actually done and of the profits made by the actual occupier is admissible in order to ascertain the rateable value (*k*). If evidence of the gross receipts is given, an appellant must be allowed to give evidence of the outgoings which have been found necessary to earn those receipts (*l*).

Evidence of trade done and of outgoings.

SUB-SECT. 6.—*Mines, Brickfields, and Cemeteries.*

Method of ascertaining rateable value of coal mines.

74. The rateable value of a coal mine (*m*) may be ascertained upon the same principles (*n*), speaking generally, as that of a railway (*o*) or a waterworks undertaking (*p*)—that is, by making deductions from the actual yearly receipts for working expenses, for the tenant's share of the profits, and for expenses of repair (*q*). The latter deduction includes the cost of maintaining the permanent

at by taking the rent reserved and adding thereto a sum estimated to represent the burden of the tying covenant.

(*k*) See p. 27, *ante*. This principle was first applied to licensed property in the case of a railway refreshment room (*Clark* v. *Fisherton-Angar* (1880), 6 Q. B. D. 139), and afterwards to public-houses generally, at any rate where there is no prevailing market rent (*Cartwright* v. *Sculcoates Union*, [1900] A. C. 150, by which *Dodds* v. *South Shields Poor Law Union Assessment Committee*, [1895] 2 Q. B. 133, C. A., is apparently overruled). The sum which a brewer might give in order to obtain possession of a free house and convert it into a tied house is not to be taken into consideration so as to bring the rateable value above the rent that a free tenant would give in the market (*Bradford-on-Avon Assessment Committee* v. *White*, [1898] 2 Q. B. 630).

(*l*) *Parr* v. *Leigh Union* (1905), 1 Konstam's Rating Appeals, 211. It does not appear that an appellant can be compelled to give evidence of the trade done (*Cartwright* v. *Sculcoates Union*, [1900] A. C. 150, *per* Lord MORRIS, at p. 155). The most usual method of valuation, when based on receipts, is to take the actual profits of the last year, or of an average of years, to subtract therefrom the remuneration which the hypothetical tenant would expect for himself, and to apportion the remainder between rent (*i.e.*, rateable value) and rates and taxes. The somewhat less accurate method of taking a round percentage of the gross receipts to represent the gross estimated rental or the rateable value (see *Parr* v. *Leigh Union*, *supra*; *Cartwright* v. *Sculcoates Union*, *supra*) has been looked upon with less favour in recent years, since the great decline in the profits of the licensed trade and, consequently, in the value of public-houses.

(*m*) As to mines generally, see title MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 497 *et seq.*

(*n*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1; *Denaby and Cadeby Colliery Co.* v. *Doncaster Union Assessment Committee* (1898), 78 L. T. 388. It had long before been decided that the rent at which a coal mine would let, and at which it must be rated, must be something less than the net profits of the mine (*R.* v. *Attwood* (1827), 6 B. & C. 277); and that if a tenant had erected engines etc. for working the mine, the true rent was not to be measured by the royalties reserved in the lease (*R.* v. *Granville* (*Lord*) (1829), 9 B. & C. 188).

(*o*) See pp. 30 *et seq.*, *ante*.

(*p*) See p. 35, *ante*.

(*q*) *Denaby and Cadeby Colliery Co.* v. *Doncaster Union Assessment Committee*, *supra*; *Brown & Co., Ltd.* v. *Rotherham Union Assessment Committee* (1900), 64 J. P. 580.

roads and airways (*r*), but not the cost of sinking shafts (*s*). No deduction is allowed to provide for the ultimate replacement of the value of the minerals exhausted (*t*).

Where a coal mine extends into more than one parish, the rateable value in each parish must be based on the amount of coal that is worked in the parish (*u*).

Parochial principle.

75. Tin, lead, and copper mines, other than those of which the royalties are wholly reserved in kind, are valued according to a special standard of valuation (*a*).

Tin, lead, and copper mines.

76. The rateable value of a rapidly exhausting hereditament, such as a brickfield (*b*), chalk pit (*c*), or gravel pit (*d*), is the rent which a tenant might at the date of the rate be expected to give for a year's tenancy of it; and this may well be something less than a figure arrived at by a calculation based on the rent and the royalties payable upon the maximum quantity of bricks that might be made or of material that might be got (*b*). The royalty which the actual tenant has agreed to pay is a matter to be looked at; and there can be no deduction on account of a sinking fund to replace the value of the earth exhausted (*b*). The rateable value is to be ascertained with regard to the amount of gravel or other material that remains unexhausted at the date of the rate (*e*).

Brickfields, chalk pits, or gravel pits.

77. The rateable value of a cemetery in the occupation of a commercial company (*f*) is calculated upon principles much the

Cemeteries.

(*r*) *Brown & Co., Ltd.* v. *Rotherham Union Assessment Committee* (1900), 64 J. P. 580. These expenses are therefore not deductible as working expenses before arriving at the gross estimated rental. As to gross estimated rental, see p. 25, *ante*.

(*s*) *R.* v. *Attwood* (1827), 6 B. & C. 277.

(*t*) Compare *R.* v. *Westbrook*, *R.* v. *Everist* (1847), 10 Q. B. 178; *Coltness Iron Co.* v. *Black* (1881), 6 App. Cas. 315 (a decision upon income tax); and see title INCOME TAX, Vol. XVI., pp. 625, 653. It is not uncommon, instead of applying the more accurate system described in the text, *supra*, to estimate the rateable value of a coal mine at some royalty calculated on the previous year's output added to a rent for the surface, buildings, and other works occupied.

(*u*) The whole rateable value of such a mine must not be placed in the parish where the shaft is (*R.* v. *Foleshill* (*Inhabitants*) (1835), 2 Ad. & El. 593).

(*a*) Rating Act, 1874 (37 & 38 Vict. c. 54), s. 7; see *Snailbeach Mine Co.* v. *Forden Guardians* (1876), 35 L. T. 514. The Rating Act, 1874 (37 & 38 Vict. c. 54), does not apply where the dues are wholly reserved in kind (*ibid.*, s. 13; *Van Mining Co.* v. *Llanidloes Overseers* (1876), 1 Ex. D. 310). As to the rule in cases of reservation of dues in kind, see p. 4, *ante*.

(*b*) *R.* v. *Westbrook*, *R.* v. *Everist* (1847), 10 Q. B. 178.

(*c*) *R.* v. *North Aylesford Union Guardians* (1872), 37 J. P. 148. The profits which the occupiers make by being occupiers also of an adjoining cement works must not be taken into account (*ibid.*).

(*d*) *Farnham Flint, Gravel and Sand Co.* v. *Farnham Union*, [1901] 1 K. B. 272, C. A., which apparently overrules *R.* v. *Whaddon* (1875), L. R. 10 Q. B. 230.

(*e*) *Farnham Flint, Gravel and Sand Co.* v. *Farnham Union*, *supra*. If *R.* v. *Whaddon*, *supra*, is still good law in spite of the decision in *Farnham Flint, Gravel and Sand Co.* v. *Farnham Union*, *supra*, then, if the occupier has a right to take up fresh land, it is permissible to take that right into account.

(*f*) See p. 27, *ante*.

SECT. 2. Rateable Value of Special Classes of Property.

same as those applicable to the case of a railway (*g*). The receipts upon which the calculation is based include receipts from the sale of rights of burial in perpetuity (*h*) and of portions of the land itself for burial purposes (*i*). Such receipts must not be spread over several years (*i*), although the receipts of the previous year are not conclusive of the receipts that may be expected in the year of the rate (*k*). Salaries of directors and other officers cannot be deducted, if unconnected with the occupation of the land (*l*).

SUB-SECT. 7.—*Woodlands and Sporting Rights.*

Land used only as plantation.

78. The rateable value of land used only as a plantation or a wood is ascertained as if the land were in its natural and unimproved state (*m*); the right of sporting must be taken into account as enhancing the value (*n*), but nothing must be added for the possibility of improving the land by draining or other operations (*o*).

Land used for growth of saleable underwood.

The rateable value of land used for the growth of saleable underwood is estimated as if the land were let for that purpose (*p*) at a rent which a person would give for it who is to have the profits of the underwood when ready for cutting (*q*).

Land used for both purposes.

Land which is used for both the above purposes may be assessed according to either standard at the option of the assessing authority (*r*).

Sporting rights.

79. Where any right of sporting (*s*) is in the hands of the occupier of the land (*t*), or where it is in the hands of the owner of the land who is not also the occupier (*a*), the value of the right is included in ascertaining the rateable value of the land. But where the sporting right is severed from the occupation of the land, and

(*g*) See p. 35, *ante*. There can be no sinking fund for the ultimate renewal of the hereditament; compare *R.* v. *Westbrook*, *R.* v. *Everist* (1847), 10 Q. B. 178.

(*h*) *R.* v. *St. Mary Abbotts, Kensington* (*Inhabitants*) (1840), 12 Ad. & El. 824; and see title BURIAL AND CREMATION, Vol. III., p. 513.

(*i*) *R.* v. *Abney Park Cemetery Co.* (1873), L. R. 8 Q. B. 515.

(*k*) See the remarks on *R.* v. *Abney Park Cemetery Co.*, *supra*, in *Farnham Flint, Gravel and Sand Co.* v. *Farnham Union*, [1901] 1 K. B. 272, 282, 284, C. A.

(*l*) *R.* v. *St. Giles, Camberwell* (*Inhabitants*) (1850), 14 Q. B. 571 (which case affords an example of valuation according to the method indicated in the text, *supra*). Where directors' fees are connected with the occupation of the land, they may be deducted (*R.* v. *Southampton Dock Co.* (1851), 14 Q. B. 587); see p. 40, *ante*.

(*m*) Rating Act, 1874 (37 & 38 Vict. c. 54), s. 4 (a).

(*n*) *Eyton* v. *Mold Overseers* (1880), 6 Q. B. D. 13.

(*o*) *Westmoreland* (*Earl*) v. *Southwick and Oundle* (1877), 36 L. T. 108.

(*p*) Rating Act, 1874 (37 & 38 Vict. c. 54), s. 4 (b).

(*q*) *R.* v. *Mirfield* (*Inhabitants*) (1808), 10 East, 219, which laid down that saleable underwoods were to be rated in every year, and not only in the year in which they were cut.

(*r*) Rating Act, 1874 (37 & 38 Vict. c. 54), s. 4 (c).

(*s*) See p. 4, *ante*. As to sporting rights generally, see title GAME, Vol. XV., pp. 207 *et seq.*

(*t*) *R.* v. *Williams* (1854), 23 L. T. (o. s.) 76.

(*a*) Rating Act, 1874 (37 & 38 Vict. c. 54), s. 6 (1). In this case, the occupier may have the enhancement of value due to the sporting right certified, and may deduct against his landlord the rates on the amount certified.

is let, the rateable value of the right must be ascertained separately (*b*); and either the owner or lessee of the right, as the rating authority may determine, may be rated as the occupier of it (*c*).

SECT. 2. Rateable Value of Special Classes of Property.

SUB-SECT. 8.—*Tithe Rentcharge.*

Method of ascertaining rateable value.

80. The rateable value of a tithe rentcharge is ascertained by taking the gross income and making deductions therefrom in respect of the following matters—ecclesiastical dues (*d*), costs of collection and bad debts (*e*), and tenant's rates and taxes (*f*). The costs of collection should include an adequate remuneration for the collector; beyond this, no deduction can be made for the hypothetical tenant's profits (*g*). The services of the clergy (*h*), though paid for by the recipient of the tithe rentcharge (*i*), and even though the clergy so remunerated minister in another parish (*k*), do not form the subject of deduction; neither does the cost of repairing the chancel of the parish church (*l*), nor do payments to Queen Anne's Bounty, though these are charged on the tithe rentcharge (*m*).

Part III.—Poor Rate: Procedure Outside the Metropolis.

SECT. 1.—*Introductory.*

Statutory regulation of valuation lists.

81. The Union Assessment Acts, 1862—1880 (*n*), regulate the making of valuation lists in every union and parish to which they

(*b*) Rating Act, 1874 (37 & 38 Vict. c. 54), s. 6 (2).

(*c*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1; see p. 25, *ante*.

(*d*) *R.* v. *Joddrell* (1830), 1 B. & Ad. 403; *R.* v. *Capel* (1840), 12 Ad. & El. 382; *Hackney and Lamberhurst Tithe Commutation Rent Charges* (1858), E. B. & E. 1; and see title ECCLESIASTICAL LAW, Vol. XI., p. 749, note (*l*).

(*e*) *Hackney and Lamberhurst Tithe Commutation Rent Charges, supra; St. Asaph (Dean and Chapter)* v. *Llanrhaiadr-yn-Mochnant Overseers*, [1897] 1 Q. B. 511, C. A.

(*f*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1. The rates and taxes deductible are specified at p. 29, *ante*, and the points for which *Hackney and Lamberhurst Tithe Commutation Rent Charges, supra*, is there cited as an authority were decided with respect to tithe rentcharge.

(*g*) *Hackney and Lamberhurst Tithe Commutation Rent Charges, supra; St. Asaph (Dean and Chapter)* v. *Llanrhaiadr-yn-Mochnant, supra.*

(*h*) *R.* v. *Joddrell, supra; Hackney and Lamberhurst Tithe Commutation Rent Charges, supra.*

(*i*) *R.* v. *Groves* (1860), 2 E. & E. 793; *Wheeler* v. *Burmington Overseers* (1861), 1 B. & S. 709; *R.* v. *Sherford* (1867), L. R. 2 Q. B. 503, not following on this point *Hackney and Lamberhurst Tithe Commutation Rent Charges, supra; Williams* v. *Llangeinwen Overseers* (1861), 1 B. & S. 699; *Scriven with Tentergate Overseers* v. *Fawcett* (1863), 3 B. & S. 797.

(*k*) *Lawrence* v. *Tolleshunt Knights Overseers* (1862), 2 B. & S. 533.

(*l*) *St. Asaph (Dean and Chapter)* v. *Llanrhaiadr-yn-Mochnant, supra.*

(*m*) *Hackney and Lamberhurst Tithe Commutation Rent Charges, supra.*

(*n*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103); Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39); Union Assessment Act, 1880 (43 & 44 Vict. c. 7).

SECT. 1. Introductory.

apply (*o*), that is, in every union (*p*) formed under the Poor Law Amendment Act, 1834 (*q*), any union formed under other Acts (*r*), and any parish not in union (*s*) which may have adopted them.

SECT. 2.—*Method of Assessment.*

SUB-SECT. 1.—*The Overseers.*

Functions.

82. In each parish (*t*) the overseers (*u*) are charged with the making of valuation lists (*a*), the making and levying of the poor rate (*b*), and the defending of objections and appeals against the poor rate (*c*). Many of the overseers' functions are in practice carried out by the assistant overseer (*d*).

SUB-SECT. 2.—*The Assessment Committee.*

Appointment and functions.

83. The assessment committee is a body appointed every year for every union and every parish not in union by the guardians (*e*) from among themselves (*f*). The committee has authority in every parish in the union (*g*), and has various functions connected with the making and revision of valuation lists (*h*). It has nothing to do with the making of the poor rate, but no one may appeal against a poor rate without giving notice to the committee (*i*), nor, in most cases, without previously objecting before the committee to the valuation list.

(*o*) They apply to the great majority of parishes. Local Acts are necessarily disregarded in dealing with this subject. As to unions, see title POOR LAW, Vol. XXII., pp. 553 *et seq.*

(*p*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 2.

(*q*) 4 & 5 Will. 4, c. 96. As to the meaning of "parish" in this Act, see title POOR LAW, Vol. XXII., p. 592, note (*e*).

(*r*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 45.

(*s*) Union Assessment Act, 1880 (43 & 44 Vict. c. 7), s. 2.

(*t*) But in urban parishes any powers, duties or liabilities of the overseers may be conferred upon the borough or district council by an order of the Local Government Board (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 33 (1)); see title LOCAL GOVERNMENT, Vol. XIX., p. 267.

(*u*) See title POOR LAW, Vol. XXII., pp. 523, 529, 530; and see title LOCAL GOVERNMENT, Vol. XIX., p. 267.

(*a*) See pp. 47 *et seq.*, *post*.

(*b*) See pp. 53 *et seq.*, *post*.

(*c*) See pp. 57 *et seq.*, *post*. This duty is shared with the assessment committee, and has in some cases been transferred altogether from the overseers; see pp. 49, 57, 62.

(*d*) Appointed under Poor Relief Act, 1819 (59 Geo. 3, c. 12), s. 7, by the body to whom the power of appointment is transferred by Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 5 (1), 19 (5), or 33 (1). As to the functions that he may perform, see *Skingley* v. *Surridge* (1843), 11 M. & W. 503; *Points* v. *Attwood* (1848), 6 C. B. 38; *Baker* v. *Locke* (1864), 18 C. B. (N. S.) 52. The effect of frauds committed by an assistant overseer in collecting money on account of rates was discussed in *Hornchurch Overseers* v. *London, Tilbury and Southend Rail. Co.* (1912), 76 J. P. 385.

(*e*) As to boards of guardians generally, see title POOR LAW, Vol. XXII., pp. 531 *et seq.*

(*f*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 2; see also *ibid.*, ss. 4—7.

(*g*) *Ibid.*, s. 7.

(*h*) See pp. 47 *et seq.*, *post*.

(*i*) Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1. As to the manner and effect of their appearance as respondents to such an appeal, see p. 63, *post*.

SECT. 2. Method of Assessment.

84. The assessment committee consists of not less than six nor more than twelve members (*j*); but if a municipal borough is coterminous with the union the town council may appoint additional members (*k*).

Membership, meetings, and minutes.

The quorum at a meeting of the committee is three members, or one-third of the whole number, whichever is greater; the majority of the members present decides, and the chairman has a casting vote (*l*). The committee must keep a minute book, and any ratepayer in the union must be allowed to inspect such book and to take extracts free of charge (*m*).

The committee may require the production before it of books of assessment of parliamentary or parochial taxes or rates (*n*).

Clerk to the assessment committee.

85. The clerk, or assistant clerk, of the guardians is the clerk to the assessment committee (*o*). He must send annually copies of the totals of the gross values of every parish, together with the totals of the rateable values of agricultural land and of other hereditaments, to the clerk of the peace for the county (*p*).

SUB-SECT. 3.—*Valuation Lists.*

Poor rate follows valuation list as regards rateable value.

86. A poor rate must follow the valuation list in force in the parish at the time of the making of the rate, as far as the rateable value (*q*) of any hereditament included in the list is concerned (*r*). The total of the rateable values (*s*) shown in the list in force for the parish when the guardians make their estimate, together with the total, shown in such list, of the annual value of property in the parish on which the Government pays a contribution in lieu of rates (*t*), is conclusive for the purpose of ascertaining the amount payable by the parish to the common fund of the union (*a*).

The valuation list in force.

87. The last valuation list approved by the assessment committee and delivered by it to the overseers, as altered and added to by any supplemental valuation list so approved and delivered, is the

(*j*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 2.
(*k*) *Ibid.*, s. 3.
(*l*) *Ibid.*, s. 9.
(*m*) *Ibid.*, s. 11.
(*n*) *Ibid.*, s. 13; but see the Inland Revenue Act, 1863 (26 & 27 Vict. c. 33), s. 22, as regards income tax assessments.
(*o*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 10.
(*p*) Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 9; Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), s. 5 (b).
(*q*) See pp. 25 *et seq.*, *ante*.
(*r*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 28. This provision also applies to rates by law required to be based on the poor rate, *e.g.*, the general district rate; see p. 85, *post*. As to new buildings and hereditaments becoming liable to be rated in parts, see p. 54, *post*.
(*s*) Reduced by an amount equal to one half of the rateable value of the agricultural land in the parish (Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), s. 3 (2)); see p. 23, *ante*.
(*t*) See p. 14, *ante*.
(*a*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 30; Poor Law Board's General Order of the 26th February, 1866, art. 1; *R.* v. *West Ashford Union* (1907), 2 Konstam's Rating Appeals, 624; and see title POOR LAW, Vol., XXII., p. 549.

SECT. 2. **Method of Assessment.**

valuation list in force, and continues to be so, until a new valuation list for the whole parish has been so approved and delivered (*b*).

Contents and form of new valuation list.

88. A new valuation list must contain all the rateable hereditaments in the parish (*c*), including empty houses if ready to be occupied (*d*). It must show the gross estimated rental of each hereditament included (*e*), the rateable value of agricultural land, and (separately) the rateable value of buildings and other hereditaments not being agricultural land (*f*), the totals of those three sets of values (*g*), and the annual value of land in the parish on which the Crown pays a contribution in lieu of rates (*h*). It is made in a prescribed form (*i*).

Making the list.

89. A new list is made by the direction of the assessment committee, either on its own initiative or on the application of a person aggrieved. The committee may either direct it to be made by the overseers or by a person appointed for the purpose (*k*).

Signature and deposit.

When the overseers have made the list (*l*), they must sign it (*m*), and deposit it in the place in which rate-books are deposited (*n*).

Notice of deposit.

They must give public notice of the deposit on the following Sunday by affixing the notice before morning or evening service at or near the principal door of every church and chapel of the Established Church in the parish at which divine service is actually performed (*o*). Where the parish contains no such church or chapel, the notice must be affixed in some conspicuous place (*p*). The notice does not require signature (*q*).

(*b*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 24. There is thus always a valuation list in force for every parish, and there is no time limited (as there is in the Metropolis; see p. 116, *post*) for making a new list.

(*c*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 14, 27.

(*d*) *R.* v. *Malden* (1869), L. R. 4 Q. B. 326.

(*e*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 15, 27.

(*f*) *Ibid.*, ss. 14, 27; Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), s. 5 (a).

(*g*) Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), s. 5 (b); Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 30.

(*h*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 30. As to contributions by the Crown in lieu of rates, see p. 14, *ante*.

(*i*) Agricultural Rates Order, 1896, art. 16, Sched. W (Stat. R. & O. Rev., Vol. X., Poor, England, p. 469).

(*k*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 26. As to the manner of appointing such a person, see p. 51, *post*.

(*l*) As to the contents and form of the list, see the text, *supra*. As to signature by persons appointed to make the list instead of overseers, see p. 51, *post*.

(*m*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 14, 27.

(*n*) *Ibid.*, ss. 17, 27.

(*o*) *Ibid.*; Parish Notices Act, 1837 (7 Will. 4 & 1 Vict. c. 45), s. 2; *R.* v. *Marriott* (1840), 12 Ad. & El. 779, 780; *R.* v. *Whipp* (1843), 4 Q. B. 141; *Ormerod* v. *Chadwick* (1847), 16 M. & W. 367; *Burnley* v. *Methley Overseers* (1859), 1 E. & E. 789.

(*p*) Poor Rate Assessment and Collection Act, 1869, Amendment Act, 1882 (45 & 46 Vict. c. 20), s. 4.

(*q*) *Burnley* v. *Methley Overseers*, *supra*.

SECT. 2. Method of Assessment.

When fourteen days have expired from the Sunday on which the notice was affixed, the overseers must transmit the list to the assessment committee (*r*), who must then give notice to certain railway and other companies (*s*).

Transmission to assessment committee.

After notice of deposit, any person assessed or liable to be assessed to the poor rate in the parish, and, after transmission, any overseer or ratepayer in the union, may inspect and take extracts from the list free of charge (*t*).

Inspection.

Notice of objection.

90. Before the expiration of twenty-eight days from the notice of deposit any person aggrieved (*a*) by the unfairness of his own or some other ratepayer's assessment, and any overseer of any parish in the union, may give written notice of objection to the list to the assessment committee, the overseers, and the other ratepayer, if any, concerned (*b*). The notice must specify all such grounds of objection as have arisen when the notice is given (*c*).

Hearing of objection.

If any notice of objection is given within the time limited, the committee must hold a meeting for hearing it, and must give the overseers at least twenty-eight days' notice of such meeting; and the overseers must publish the notice on the following Sunday (*d*). An

(*r*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 17, 27.

(*s*) Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 5.

(*t*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 17, 27; Poor Rate Act, 1743 (17 Geo. 2, c. 3), s. 2; Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 5.

(*a*) This includes, at any rate, such owners as are liable to pay rates instead of the occupiers under the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), ss. 1, 3, 4 (see *ibid.*, s. 13), and probably includes in any case the owner of the hereditament affected. It includes a person who is contractually liable to refund the rate to the person assessed (*R.* v. *Brentford Union Assessment Committee, Ex parte Herring* (1907), 71 J. P. 281); but it does not include an occupier who has himself been omitted from a rate; compare *R.* v. *George* (1837), 6 Ad. & El. 305.

(*b*) Union Assessment Committee Act, 1862, (25 & 26 Vict. c. 103), ss. 18, 19, 27. As to service on the assessment committee, see *ibid.*, s. 42. As to notice of objection after final approval of the list, see p. 57, *post*. In a rural parish having a parish council, it may be that the council is entitled to notice instead of the overseers; see Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 6 (1); Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1; title LOCAL GOVERNMENT, Vol. XIX., pp. 246, 247. In other parishes, an order substituting some other body for the overseers for this purpose may have been made by the Local Government Board; see note (*t*), p. 46, *ante*; title LOCAL GOVERNMENT, Vol. XIX., p. 267.

(*c*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 18, 27. The overseers or the third party, if any, concerned may waive the giving of notice of objection, and, if so, the committee may hear the objection (*ibid.*, s. 19). Upon an appeal, the appellant is confined to grounds raised in his notice of objection; see p. 58, *post*; see also note (*t*), p. 62, *post*. If the objector's grievance is that his own assessment is too high, "unfairness" is a sufficient ground of objection (*R.* v. *West Ashford Union* (1907), 2 Konstam's Rating Appeals, 624). For grounds of objection and appeal, see Encyclopædia of Forms and Precedents, Vol. XI., pp. 224—264.

(*d*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 19, 27. The notice is published in the same manner as the notice of deposit of the list; see the text, *supra*.

SECT. 2. Method of Assessment.

objector may appear by any agent (*e*), and need not adduce evidence (*f*).

Alterations apart from objection.

91. Apart from objection, the assessment committee may make such alterations in the list as it thinks fit (*g*), and may appoint a person to value any of the rateable hereditaments in the parish (*h*).

Approval of list.

92. When the assessment committee has determined all objections and revised the list as above, it approves the list under the hands of three members present at the meeting at which the list is approved, with the date of such approval (*i*), but the approval must not take place before twenty-eight days have elapsed from the Sunday on which notice of deposit was given (*k*).

Alterations in value or additions to list.

If any alteration is made in value or any rateable hereditament is newly inserted in the list by the assessment committee, the committee must cause the list to be re-deposited and notice given in the same manner as upon the original deposit (*l*) by the overseers (*m*), and must appoint a day, not less than seven nor more than fourteen days from the re-deposit, for hearing objections to the list as altered (*n*). The committee may afterwards make further alterations (*o*).

Final approval of altered list.

When the objections have been heard and the alterations made and a fresh re-deposit, if necessary, had, the assessment committee must finally approve the list (*p*). The totals are then cast, the list is retained by the guardians, and a copy, signed by the three members

(*e*) The committee not being a court (*R.* v. *St. Mary Abbotts, Kensington, Assessment Committee*, [1891] 1 Q. B. 378, C. A.); see title BARRISTERS, Vol. II., p. 377.

(*f*) *R.* v. *Essex Justices* (1882), 46 J. P. 724.

(*g*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 20, 27.

(*h*) *Ibid.*; and see *ibid.*, s. 16; *Rawlence* v. *Hursley Union Guardians* (1877), 3 Ex. D. 44. As to the manner of appointment, see p. 51, *post*.

(*i*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 20, 27; *R.* v. *West Ashford Union* (1907), 2 Konstam's Rating Appeals, 624.

(*k*) *Reigate Union Assessment Committee* v. *South Eastern Rail. Co.*, [1894] 1 Q. B. 411. As to notice of deposit, see p. 48, *ante*.

(*l*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 21, 27; *R.* v. *Chorlton Union* (1872), L. R. 8 Q. B. 5.

(*m*) *R.* v. *Chorlton-on-Medlock Overseers* (1865), 35 L. J. (M. C.) 56.

(*n*) Not from the date of the notice (Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 21, 27). The right of objection on re-deposit is possibly confined to the alterations. Apparently the provisions which apply to objections to the list as originally deposited (see p. 49, *ante*) apply to objections made on re-deposit, except as to time.

(*o*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 21, 27. If the committee does so a further re-deposit appears to be required.

(*p*) *Ibid.*, ss. 21, 27. The final approval is done in the same manner as the first approval, and if before the first approval no alterations have been made, the first approval is the final approval; see the text, *supra*; but see *Reigate Union Assessment Committee* v. *South Eastern Rail. Co.*, *supra*.

who approved the list, sent to the overseers (*q*), who must preserve it and allow inspection (*r*). If an assessment is afterwards altered upon an appeal against a rate, the committee must alter the list to make it conform with the amended rate (*s*).

Supplemental list:

(i.) made by overseers;

(ii.) made by order of assessment committee.

93. A supplemental valuation list must be made by the overseers when any property not included in the valuation list in force becomes rateable, when any property included becomes liable to be rated in parts not separately assessed in the list, or when any property has been increased or reduced in value (*t*). The supplemental list contains only the property concerned (*u*).

The assessment committee may, where it sees fit, order a supplemental list to be made in substitution for any part of the valuation list in force, in the same way that it may order a new list for the whole parish to be made (*a*).

A supplemental list is made, deposited, objected to, and approved in the same way as a new list (*b*).

SUB-SECT. 4.—*Valuation by a Valuer.*

Purposes for which appointment is made.

94. A person may be appointed to make a new valuation for the purpose of a new or supplemental list, or for the purpose of assisting the assessment committee in its work of revision (*c*). A person may also be appointed to make and sign a new or supplemental list instead of the overseers (*d*). In all these cases the assessment committee makes the appointment with the previous consent of a majority of the guardians, present and voting at an ordinary meeting of which notice has been sent to every guardian (*e*). The guardians may, in the manner above stated, appoint a competent person, on the application of the assessment committee, to assist them in valuing the rateable hereditaments of the union (*f*).

(*q*) Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 30; Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 23, 27.

(*r*) *Ibid.*, ss. 23, 27; as to the place of inspection, see *ibid.*, s. 31.

(*s*) *Ibid.*, s. 22.

(*t*) *Ibid.*, s. 25. A new building which becomes occupied during the currency of a rate, and is inserted therein under the Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 38 (see p. 54, *post*), must be inserted in a supplemental list (*ibid.*).

(*u*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 25.

(*a*) *Ibid.*, s. 26; see pp. 48, 49, *ante*.

(*b*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 27.

(*c*) *Ibid.*, ss. 26, 20, 27; see p. 50, *ante*. As to the form, contents, and inspection of the valuation in either case, see Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 4; *Rawlence* v. *Hursley Union Guardians* (1877), 3 Ex. D. 44.

(*d*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 26, 27. The list when made must be published and dealt with in the same manner as a list made and signed by overseers.

(*e*) *Ibid.*, ss. 20, 26, 16, 27; compare *Smith* v. *Leigh Union*, [1904] 1 K. B. 484, C. A.

(*f*) Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 32. The provision in the Poor Law Amendment Act, 1848 (11 & 12 Vict. c. 110), s. 7, for a valuation of a part of the rateable property in a parish being made

SECT. 2. Method of Assessment.

SUB-SECT. 5.—*Expenses of Valuation and Valuation List.*

Charge on common fund.

Charge on parish.

Raised by loan.

Map or plan.

Remuneration of valuer.

Expenses of overseers.

95. The assessment committee may charge expenses of valuations and valuation lists and certain other matters upon the common fund (*g*) of the union (*h*).

In certain cases, however, the expenses of making a valuation by direction of the committee may be charged on the parish, if made after the overseers have delivered an unsatisfactory valuation (*i*), but not otherwise (*k*).

If the assessment committee orders a valuation of all the rateable hereditaments of a union, the expenses may be raised by a loan (*l*).

The cost of a map or plan may be charged to the parish or to the common fund of the union, as the Local Government Board directs (*m*).

The remuneration of a valuer appointed to assist the assessment committee is paid out of the common fund (*n*).

Expenses of overseers in making lists or in valuing hereditaments are in general payable out of the poor rate, but the expenses of a valuation can only be so paid if the consent of the assessment committee was obtained before they were incurred (*o*). Either before or after the expenses have been incurred (*p*) the sanction is required, in a rural parish, of the parish council (*q*), or of the parish meeting (*r*), as the case may be, and, in an urban parish, of the urban authority, if the Local Government Board has made an order to that effect (*s*), or, if no such order has been made, of the vestry (*t*).

under the direction of the guardians is thought to be now practically obsolete.

(*g*) As to the common fund, see title POOR LAW, Vol. XXII., pp. 549 *et seq.*

(*h*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 37, 38; *R.* v. *Richmond* (1865), 6 B. & S. 541.

(*i*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 39.

(*k*) *R.* v. *Richmond, supra.*

(*l*) Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 8; see also Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 3; *R.* v. *Hurstbourne Tarrant Overseers* (1858), E. B. & E. 246. But recourse is not now had in practice to the provisions stated in the text, *supra*, and such loans are usually sanctioned under the Poor Law Act, 1889 (52 & 53 Vict. c. 56), s. 2; see title POOR LAW, Vol. XXII., pp. 537, 538.

(*m*) Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 10; Local Government Board Act, 1871 (34 & 35 Vict. c. 70), s. 2.

(*n*) Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 32; see p. 66, *post*. As to the appointment of a valuer to assist the assessment committee, see p. 51, *ante*.

(*o*) Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 7; *R.* v. *Cumberlege* (1877), 2 Q. B. D. 366.

(*p*) *R.* v. *Chorlton-upon-Medlock* (1875), 1 Q. B. D. 62.

(*q*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 6 (1) (a); and see title LOCAL GOVERNMENT, Vol. XIX., pp. 246, 247.

(*r*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 19; and see title LOCAL GOVERNMENT, Vol. XIX., p. 258.

(*s*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 33 (1); and see title LOCAL GOVERNMENT, Vol. XIX., p. 267.

(*t*) Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 7; and see title LOCAL GOVERNMENT, Vol. XIX., p. 268.

SECT. 3.—*Making of the Rate.*

SECT. 3. Making of the Rate.

96. The overseers levy the poor rate (*u*) in order to defray their own expenses (*a*), and to provide funds to meet precepts (*b*) addressed to them by guardians (*c*), municipal corporations (*d*), district councils (*e*), parish councils (*f*), parish meetings (*g*), or burial boards (*h*). Purpose of the levy.

They may make such a rate for any period within their term of office, and, if made for a period of more than three months, it may be made payable by instalments (*i*). If necessary, a fresh rate may be made before the period of the former rate has expired (*k*). Period for which rate may be levied.

The courts will, in certain circumstances, issue a mandamus to levy a poor rate (*l*). Mandamus.

97. A poor rate may be made only to meet expenses which are about to be incurred (*m*). It must not therefore be made to repay loans (*n*), unless these have been borrowed and charged upon the poor rate under statutory powers (*o*). But the charges of legal proceedings necessarily incurred by the overseers may be reimbursed out of the poor rate (*p*), and so may unforeseen debts (*q*). Claims lawfully incurred by guardians may be paid within the half-year after they have been incurred, or within three months after the Expenses met by poor rate.

(*u*) Poor Relief Act, 1601 (43 Eliz. c. 2), s. 1.

(*a*) As to such expenses, see p. 52, *ante*. The extent to which the overseers' debts and the expenses of legal proceedings may be levied out of the poor rate is limited by the Poor Law Audit Act, 1848 (11 & 12 Vict. c. 91), ss. 1, 2; and see title POOR LAW, Vol. XXII., p. 530.

(*b*) As to enforcing precepts, see *Read* v. *Punter* (1898), 14 T. L. R. 455; *R.* v. *Bermondsey Borough Council, Ex parte Bermondsey Guardians* (1908), 72 J. P. 330; *Plympton St. Mary Rural Council* v. *Reynolds*, [1909] 1 K. B. 768.

(*c*) See pp. 70, 76, *post*; and see title POOR LAW, Vol. XXII., p. 549.

(*d*) See pp. 78—82, *post*.

(*e*) See pp. 92—94, *post*; and see title LOCAL GOVERNMENT, Vol. XIX., pp. 335, 336.

(*f*) See title LOCAL GOVERNMENT, Vol. XIX., pp. 242, 243.

(*g*) See *ibid.*, p. 259.

(*h*) In exceptional cases they may have to make a separate burial rate; see title BURIAL AND CREMATION, Vol. III., pp. 475, 476.

(*i*) Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 15. As to the effect of making the rate in instalments, see pp. 65, 69, *post*; and see notes (*r*), (*a*), p. 58, *post*.

(*k*) Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 14 (1). As to concurrent rates, see *R.* v. *Best* (1847), 2 Saund. & C. 90; *R.* v. *Fordham* (*Inhabitants*) (1839), 11 Ad. & El. 73.

(*l*) See title CROWN PRACTICE, Vol. X., p. 87.

(*m*) *Tawny's Case* (1704), 2 Salk. 531; *R.* v. *Goodcheap* (1795), 6 Term Rep. 159; *Waddington* v. *City of London Union Guardians* (1858), E. B. & E. 370.

(*n*) *R.* v. *Wavell* (1779), 1 Doug. (K. B.) 116; *Cortis* v. *Kent Water-works Co.* (1827), 7 B. & C. 314.

(*o*) *R.* v. *Carpenter* (1837), 6 Ad. & El. 794.

(*p*) *R.* v. *Micklefield* (*Inhabitants*) (1785), Cald. Mag. Cas. 507; see *R.* v. *Gloucester Corporation* (1793), 5 Term Rep. 346.

(*q*) *R.* v. *Read* (1849), 13 Q. B. 524. The court will not, however, always grant a mandamus to make a poor rate to repay instalments of a debt which are in arrear (*R.* v. *Bedlington Overseers* (1884), 48 J. P. 486).

SECT. 3. Making of the Rate.

expiration of that half-year, but this limited period may be extended by the Local Government Board (*r*).

The rate in the £.

98. The amount which may be levied by the poor rate for the purposes of poor relief is not limited to any definite rate in the £; but the amount which may be levied by the poor rate for certain other purposes is so limited by the statutes which enable those amounts to be so levied (*s*). Where the statute limits the rate to a specified rate in the £ on the rateable value of each hereditament rated, the rate in the £ must not be increased merely because many such hereditaments are empty or exempt (*t*).

Basis of assessment.

99. The rate is assessed upon the rateable value shown in the valuation list in force (*a*), subject to two exceptions—(1) where a hereditament has become rateable in parts not separately mentioned and assessed in the list, the rateable value shown in the list is apportioned to those various parts (*b*); and (2) where a new building, which was not ready for occupation or was not shown as such in the valuation list in force when the rate was made, becomes occupied during the currency of a rate, the overseers rate the building on their own estimate of its rateable value (*c*).

Title and form of rate.

100. The title of the rate must set out the period (*d*) for which it is estimated, and, if made in instalments, the amount, and date

(*r*) Poor Law (Payment of Debts) Act, 1859 (22 & 23 Vict. c. 49), ss. 1, 4; Local Government Board Act, 1871 (34 & 35 Vict. c. 70), s. 2; and see title POOR LAW, Vol. XXII., p. 536. In recent times the rule against retrospectiveness has been considerably relaxed with regard to the special expenses rate which, in other matters, is governed by considerations similar to those which govern the poor rate; see pp. 83, 95, *post*.

(*s*) As, for instance, sums to be raised for purposes of public libraries (Public Libraries Act, 1892 (55 & 56 Vict. c. 53), s. 18 (1), (3); see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 592 *et seq.*; sums raised to meet the expenses of a parish meeting (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 19 (9); and see title LOCAL GOVERNMENT, Vol. XIX., p. 260), or to meet the expenses of education other than elementary (Education Act, 1902 (2 Edw. 7, c. 42), ss. 2 (1), 3), or for the purposes of the Education (Provision of Meals) Act, 1906 (6 Edw. 7, c. 57) (see *ibid.*, s. 3; and see title EDUCATION, Vol. XII., pp. 23, 33); compare also the provisions as to the watch rate, pp. 81, 82, *post*.

(*t*) Compare *Re Liverpool Library Act, Ex parte Brown* (1862), 26 J. P. 389. But this decision does not apply where the maximum amount to be levied is defined by reference to the sum equal to a certain rate in the £ on the rateable value of the parish, as in the case of sums raised to meet the expenses of parish councils (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 11 (3)), for the rateable value of the parish means the total of the rateable value shown in the valuation list, and this includes the rateable value of unoccupied hereditaments; see p. 48, *ante*.

(*a*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 28. Subject to the reductions allowed in the cases of agricultural land (see pp. 23, 48, *ante*) and tithe rentcharge (see p. 23, *ante*).

(*b*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 28, proviso.

(*c*) Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 38; and see p. 51, *ante*.

(*d*) That is, the date at which the period ends for which the money is being raised (*Cheney* v. *Tallowin*, [1904] 2 K. B. 763).

for payment, of each instalment (*e*). The rate is made in a prescribed form (*f*), and a declaration must be signed at the foot of the rate by the persons who make it (*g*). The name of the occupier of every rateable hereditament must be entered (*h*), even though the owner is actually rated (*i*). A rate is not void for not being made in the precise form prescribed (*j*); but it is void if it does not specify the purposes for which it is made or the authority which makes it (*k*), or if it does not give any description of the property rated (*l*).

Property included.

101. The rate is made upon all property rateable in the parish, which includes every accretion from the sea, the seashore to low-water mark, and the bank of every river to the middle of the stream (*m*).

Allowance of rate by justices.

102. A poor rate must be allowed by two justices having jurisdiction over the parish for which it is made (*n*); and, if not so allowed, is void (*o*). The two justices must sign the rate at the foot (*p*). Their duty is merely ministerial (*q*), but they may see whether the rate is made by persons having authority to make

(*e*) Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 14.

(*f*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 2, Sched., as modified by the Poor Law Board's General Order of the 14th January, 1867, art. 1, and the Local Government Board's Circular of the 30th September, 1904. A form for parishes containing agricultural land has been prescribed under the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), by the Agricultural Rates Order, 1896 (Stat. R. & O. Rev., Vol. X., Poor, England, p. 469), art. 16, Sched. Y. In this form the rateable value of agricultural land is to be shown separately from that of other hereditaments.

(*g*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 28, Sched., replacing in part the Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 2.

(*h*) The penalty for default in this respect is a fine not exceeding £2; see title ELECTIONS, Vol. XII., p. 170. As to proceedings for the recovery of the fine, see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.*

(*i*) Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 19; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 14; Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 9 (2); and see title ELECTIONS, Vol. XII., pp. 170, 196. Provisions entitling the occupier to claim such entry are contained in the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 30; Compound Householders Act, 1851 (14 & 15 Vict. c. 14); and Parliamentary Electors Registration Act, 1868 (31 & 32 Vict. c. 58), s. 30; see title ELECTIONS, Vol. XII., p. 171.

(*j*) But it would be void if the required declaration were not signed (*R.* v. *Fordham* (*Inhabitants*) (1839), 11 Ad. & El. 73, decided under the Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 2; see note (*g*), *supra*).

(*k*) *R.* v. *Eastern Counties Rail. Co.* (1856), 5 E. & B. 974.

(*l*) *R.* v. *Aire and Calder Navigation Co.* (1824), 2 B. & C. 713. But a description in somewhat general terms appears to suffice; compare *R.* v. *Eastern Counties Rail. Co.*, *supra*.

(*m*) Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 27. The portion of a wood and iron pier below low-water mark is not an accretion from the sea and cannot be rated in the parish (*Blackpool Pier Co. and South Blackpool Jetty Co.* v. *Fylde Union Assessment Committee and Layton with Warbreck Overseers* (1877), 46 L. J. (M. C.) 189).

(*n*) Poor Relief Act, 1601 (43 Eliz. c. 2), s. 1.

(*o*) *Fox* v. *Davies* (1848), 6 C. B. 11.

(*p*) If they do not sign the rate at the foot, the part below their signatures is void (*Re North Staffordshire Justices* (1853), 23 L. J. (M. C.) 17).

(*q*) *R.* v. *Yarborough* (*Earl*) (1840), 12 Ad. & El. 416; *R.* v. *Godolphin* (*Lord*) (1844), 1 Dow. & L. 830.

SECT. 3. Making of the Rate.

it (*r*). The rate is deemed to be made on the date of the allowance, and if the justices "sever" in their allowance, then on the date of the last allowance (*s*).

Notice of the rate.

103. Public notice of the rate must be given on the Sunday after it has been allowed (*t*); and, if this notice is not given, the rate is void (*a*). The notice need not state that the rate has been allowed (*b*).

Inspection of rate-book.

Any person rated to the poor in the parish may at all reasonable times take extracts from the rate-book free of charge, and obtain copies upon payment; and the persons having custody of the rate must permit such inspection or give such copies (*c*).

The rate-book as evidence.

If the rate is made in the prescribed form, the production of the rate-book, with the allowance, is *primâ facie* evidence of its having been duly made and published (*d*).

Amendment or abandonment of rate.

104. The rate cannot be amended after allowance by inserting the name of a person as having been an occupier when the rate was made (*e*); but the overseers can insert in it the name of a person who, during its currency, comes into occupation of premises which, at the date of its allowance, were occupied by another or were unoccupied (*f*); and they can also insert in it a new house or other

(*r*) *R.* v. *Folly* (1754), 1 Bott's Poor Laws by Const, 78; *Fox* v. *Davies* (1848), 6 C. B. 11; *Baker* v. *Locke* (1864), 18 C. B. (N. S.) 52. They may, apparently, refuse to allow a rate which does not specify the purposes for which it is made (*R.* v. *Wilkinson* (1886), 2 T. L. R. 869; compare *R.* v. *Eastern Counties Rail. Co.* (1856), 5 E. & B. 974).

(*s*) Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 17.

(*t*) Poor Rate Act, 1743 (17 Geo. 2, c. 3), s. 1; Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 17. The manner of publication is described in connection with notice of deposit of valuation lists: see p. 48, *ante*.

(*a*) *R.* v. *Newcomb* (1791), 4 Term Rep. 368; see *Beeson* v. *Derby Overseers* (1903), Ryde and Konstam's Rating Appeals, 328.

(*b*) *Paynter* v. *R.* (1847), 10 Q. B. 908, Ex. Ch.

(*c*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 5; and see Poor Rate Act, 1743 (17 Geo. 2, c. 3), ss. 2, 3, which are unrepealed by the former enactment (*Tennant* v. *Cranston* (1846), 8 Q. B. 707). The penalty for refusing inspection is a fine not exceeding £5, recoverable summarily (Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 5). As to penalties, see *Spenceley* v. *Robinson* (1825), 3 B. & C. 658; *Bennett* v. *Edwards* (1828), 8 B. & C. 702; as to a reasonable demand, see *Spenceley* v. *Robinson, supra*; *Parker* v. *Edwards* (1827), 7 B. & C. 594; *Wethered* v. *Calcutt* (1842), 4 Man. & G. 566; *Tennant* v. *Bell* (1846), 9 Q. B. 684; and, as to procedure before courts of summary jurisdiction, see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.* The application of the above provisions is not confined to current rates (*Batcheldor* v. *Hodges* (1836), 4 Ad. & El. 592).

(*d*) Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 18.

(*e*) *Pembroke* v. *Wye Overseers* (1883), 47 J. P. 359. A person whose name is so inserted can take the objection upon proceedings for a distress warrant (*R.* v. *Monken Hadley Overseers, Ex parte Harnett* (1910), 74 J. P. 169). Mandamus to remove the name so inserted is not the proper remedy (*ibid.*). As to recovery of the rate, see pp. 66 *et seq.*, *post*.

(*f*) Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41),

building which first becomes occupied during such period, together with the name of the occupier (*g*). They cannot abandon a rate duly made, allowed, and published, so as to escape paying costs of an appeal brought against it (*h*), but they need not resist the appeal (*i*).

SECT. 4.—*Remedies of Ratepayers.*

SUB-SECT. 1.—*Objections to the Valuation List.*

Two kinds of objections.

105. Objections to the valuation list (*j*) are of two kinds—objections made before the list has been finally approved (*k*), and objections made after final approval (*l*). The giving of a notice of objection, of either kind, and failure to obtain sufficient relief thereon are conditions precedent to an appeal to special or quarter sessions against a rate made in conformity with the valuation list (*m*).

Notice of objection after final approval.

106. Notice of objection after final approval may be given at any time (*l*). The parties entitled to notice and the contents of the notice are the same as in the case of notice given before final approval (*n*). The assessment committee is bound to hear the objection, and has the same powers and duties as upon the hearing of an objection before final approval (*o*), save that it need not give the overseers notice of the meeting at which the objection will be heard (*p*), and that it cannot alter the list by increasing the gross or rateable value already appearing in the list (*q*). If the assessment committee amends the list, it must give notice to the overseers, who are required to amend accordingly the rate current when the

s. 16; Poor Rate Assessment and Collection Act, 1869, Amendment Act, 1882 (45 & 46 Vict. c. 20), s. 3; see p. 67, *post*.

(*g*) Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 38; see p. 68, *post*.

(*h*) *R.* v. *Cambridge Justices* (1834), 2 Ad. & El. 370.

(*i*) *R.* v. *Fouch* (1841), 2 Q. B. 308.

(*j*) As to the valuation list, see pp. 47 *et seq.*, *ante*.

(*k*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 18—21; see pp. 49 *et seq.*, *ante*.

(*l*) Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1.

(*m*) *Ibid.* As to appeals, see pp. 59 *et seq.*, *post*. These conditions precedent do not apply if the rate is, under a local Act, not required to be made in conformity with a valuation list (*R.* v. *Price, Ex parte Cole* (1893), 62 L. J. (M. C.) 71), or, apparently, if the rate is not in fact so made. For forms of notice, see Encyclopædia of Forms and Precedents, Vol. XI., pp. 224, 236—243.

(*n*) Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1; see pp. 49 *et seq.*, *ante*. But it is doubtful whether a notice under this provision may be given by overseers, or may proceed upon the ground of under-assessment or omission of, or be addressed to, a third party (*Reigate Union Assessment Committee* v. *South Eastern Rail. Co.*, [1894] 1 Q. B. 411).

(*o*) See pp. 49 *et seq.*, *ante*.

(*p*) *R.* v. *Langriville Overseers*, *R.* v. *Copping Syke Overseers* (1884), 14 Q. B. D. 83.

(*q*) If the committee does so, the rate amended accordingly cannot be enforced (*Hudson* v. *Rhodes*, [1909] 1 K. B. 85).

SECT. 4. Remedies of Ratepayers.

notice of objection was given (*r*). Re-deposit (*s*) of the list is not necessary (*t*).

Notice requisite to found an appeal.

107. A notice of objection given in order to found an appeal against a rate may be given before the rate is made (*u*), provided that the appeal is taken against the rate made next after the notice of objection was given (*v*); or it may be given at any time during the currency of the rate to be appealed against (*a*). If the assessment committee amends the list upon objection, but the objector is not content with the relief given to him, it is not necessary for him, in order to found an appeal, to give a fresh notice of objection to the list as amended (*b*). If the notice is given before final approval, the rate appealed against must be the first rate made after the final approval of the list (*c*); if given after final approval, the notice will support an appeal against the current rate (*d*), or against the rate made next after the notice is given (*e*), but not against both (*f*). Notice of objection given against the valuation list in force will support an appeal against the rate made next after the notice of objection, without it being necessary to give a further notice against a subsequent supplemental list in which the hereditament in question does not appear (*g*).

Decision necessary to found an appeal.

108. In order to found an appeal, the objector must obtain a definite decision from the assessment committee on his objection; a mere delay of its decision (*h*), or an adjournment of the meeting of the committee, is not sufficient (*i*). Even if the ground of appeal is a matter outside the competence of the assessment committee,

(*r*) Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1; *R.* v. *Great Western Rail. Co.* (1874), 38 J. P. 822. There is no statutory provision expressly directing the overseers to make a refund of any amount found under these circumstances to have been overpaid; but the Local Government Board recognises the propriety of making such refunds; and see *Hastings Corporation* v. *Queen's Hotel Co., Hastings, Ltd.* (1907), 71 J. P. 369, as to claiming credit for overpayments on an instalment of general district rate already paid.

(*s*) As to re-deposit, see p. 50, *ante*.

(*t*) *R.* v. *Edmonds* (1874), L. R. 9 Q. B. 598.

(*u*) *R.* v. *Wiltshire Justices* (1879), 4 Q. B. D. 326; *R.* v. *Denbighshire Justices* (1885), 15 Q. B. D. 451; *Rhondda Valley Breweries Co.* v. *Pontypridd Assessment Committee*, [1909] 1 K. B. 652, C. A.

(*v*) *R.* v. *Great Western Rail. Co.* (1869), L. R. 4 Q. B. 323; *R.* v. *Essex Justices*, [1902] 1 K. B. 180.

(*a*) *Imperial and Grand Hotels Co.* v. *Christchurch Guardians*, [1905] 2 K. B. 239, C. A.; even after payment of the first instalment of the rate without protest (*ibid.*).

(*b*) *R.* v. *Derbyshire Justices* (1871), 25 L. T. 43.

(*c*) *R.* v. *Wiltshire Justices, supra.*

(*d*) *Imperial and Grand Hotels Co.* v. *Christchurch Guardians, supra.*

(*e*) *R.* v. *Denbighshire Justices, supra; Rhondda Valley Breweries Co.* v. *Pontypridd Assessment Committee, supra.*

(*f*) *R.* v. *Great Western Rail. Co.* (1869), L. R. 4 Q. B. 323; *R.* v. *Essex Justices, supra.*

(*g*) *Rhondda Valley Breweries Co.* v. *Pontypridd Assessment Committee, supra.*

(*h*) *R.* v. *Biggleswade Union Guardians* (1869), 21 L. T. 494.

(*i*) *R.* v. *Bedminster Union* (1876), 1 Q. B. D. 503.

that matter must apparently be brought before it by notice of objection, and there must be a decision by the committee (*k*).

Non-compliance by the overseers with an order to amend the current rate in accordance with a successful objection (*l*) will found an appeal against that rate, as being not made in conformity with the altered valuation list (*m*).

SUB-SECT. 2.—*Appeals to and from Special Sessions.*

Grounds of appeal to special sessions.

109. A person aggrieved (*n*) by a poor rate may appeal to special sessions on the ground of inequality, unfairness, or incorrectness in the valuation of any hereditament included in it (*o*), provided he has fulfilled the conditions precedent (*p*).

Special sessions.

110. Special sessions are held for the purpose of hearing such appeals four times a year by the justices of every petty sessional division (*q*), public notice being given at least twenty-eight days previously (*r*). The appeal must be brought to the "next practicable" special sessions (*s*).

Notice of appeal: respondents.

111. Notice of appeal in writing, stating the grounds of appeal, must be given to the assessment committee twenty-one days (*t*), and to the overseers (*u*) seven days at least (*v*), before the special sessions. The assessment committee is entitled to appear as respondent in the name of the guardians (*a*).

(*k*) *E.g.*, a question of occupation or exemption, the assessment committee having no jurisdiction except on questions of value (*R.* v. *Lancashire Justices* (1874), 43 L. J. (M. C.) 116; *Williams* v. *Bedminster Union Assessment Committee* (1874), 30 L. T. 710; compare *R.* v. *London and North Western Rail. Co.* (1876), 46 L. J. (M. C.) 102, where the contrary was held); see pp. 46, 49, 50, *ante*.

(*l*) See p. 57, *ante*.

(*m*) *R.* v. *Great Western Rail. Co.* (1874), 38 J. P. 822.

(*n*) See p. 49, *ante*.

(*o*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 6.

(*p*) If the conditions apply; see p. 58, *ante*; and see note (*m*), p. 57, *ante*.

(*q*) As to petty sessional divisions, see title MAGISTRATES, Vol. XIX., pp. 565 *et seq.*, and, as to rating appeals, see *ibid.*, p. 570.

(*r*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 6; *Ex parte Workington Overseers*, [1894] 1 Q. B. 416, C. A. As to the payment of the clerk's fee for such notice, see Poor Law Amendment Act, 1850 (13 & 14 Vict. c. 101), s. 7.

(*s*) *R.* v. *Trafford* (1850), 15 Q. B. 200; *R.* v. *Hammond* (1850), 4 New Sess. Cas. 316. As to the meaning of the phrase "next practicable," see p. 61, *post*.

(*t*) Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1. The special sessions have no power to enter and respite the appeal in order that a proper notice may be served (*R.* v. *Tewkesbury Justices*, [1903] 1 K. B. 39); compare p. 61, *post*. For form of notice, see Encyclopædia of Forms and Precedents, Vol. XI., p. 228.

(*u*) As to the bodies who may have been substituted for the overseers, see p. 62, *post*. If the actual overseers are entitled to notice, service on one of them is sufficient (*R.* v. *Devon Justices* (1843), 3 New Sess. Cas. 96; see also *R.* v. *Weeden Beck* (*Churchwardens*) (1853), 1 W. R. 385). The notice should be signed by the appellant himself.

(*v*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 6.

(*a*) Under the conditions laid down in the Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 2; see p. 63, *post*.

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Disqualification of justices.

112. A magistrate is not disqualified from sitting at special sessions upon an appeal against a rate by reason of his being a member of an adjoining assessment committee (*b*), or by reason of his being a ratepayer in the parish (*c*); but he may be so disqualified by reason of being himself an appellant in a similar appeal before the same court (*d*).

Jurisdiction.

113. The special sessions may only inquire into the question of the value of the hereditament concerned (*e*); subject to this limitation, they may amend or quash the rate, and award costs of any appeal that has been entered, in the same manner as quarter sessions (*f*).

Appeal from special sessions to quarter sessions.

114. Either party (*g*) may, within fourteen days after the decision of special sessions has been given, appeal against it to quarter sessions, by giving to the opposite party or parties notice of appeal in writing, stating the grounds, and entering into recognisances within five days after giving notice (*h*). If possible, twenty-one days' notice of appeal should be given to the assessment committee and fourteen clear days' notice to the overseers (*i*).

Jurisdiction.

Upon such an appeal, the quarter sessions can only decide upon

(*b*) *R.* v. *Suffolk Justices, Ex parte Manners* (1906), 2 Konstam's Rating Appeals, 480; see also *R.* v. *London Justices* (1908), 72 J. P. 137; and see p. 65, *post*.

(*c*) Justices Jurisdiction Act, 1742 (16 Geo. 2, c. 18), s. 1; *R.* v. *Essex Justices* (1816), 5 M. & S. 513; *R.* v. *Bolingbroke*, [1893] 2 Q. B. 347; *Ex parte Workington Overseers*, [1894] 1 Q. B. 416, C. A. The law is different on this point as to quarter sessions; see p. 65, *post*; and generally as to disqualification, see title MAGISTRATES, Vol. XIX., pp. 550 *et seq.*

(*d*) *R.* v. *Great Yarmouth Justices* (1882), 8 Q. B. D. 525.

(*e*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 6. They cannot look at evidence of the value of a hereditament occupied by a third party unless notice of appeal has been given in respect of the under-rating thereof (*Anderson* v. *Plomesgate Union* (1906), 2 Konstam's Rating Appeals, 407).

(*f*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 7. As to the powers of quarter sessions in these matters, see p. 64, *post*. The special sessions appear to have no power to state a special case (*Wheeler* v. *Burmington Overseers* (1860), 29 L. J. (M. C.) 175, n.).

(*g*) This includes an assessment committee which has duly appeared as respondent at special sessions (*Llanidloes and Newtown Union Guardians* v. *Pryce-Jones* (1881), 44 L. T. 310).

(*h*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 6. It is submitted that the Summary Jurisdiction Acts (see title MAGISTRATES, Vol. XIX., p. 589, note (*a*)) do not apply; see *ibid.*, p. 644, note (*m*). As to the form of the recognisances, see *R.* v. *St. Alban's Justices* (1838), 8 Ad. & El. 932; *R.* v. *Suffolk Justices, Ex parte Manners, supra*. If the assessment committee appeals, and the overseers are joined *pro formâ*, the overseers need not enter into recognisances (*R.* v. *Suffolk Justices, Ex parte Manners, supra*). For form of notice, see Encyclopædia of Forms and Precedents, Vol. XI., p. 230.

(*i*) Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1; Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), s. 1. But it is not certain whether either enactment applies (see title MAGISTRATES, Vol. XIX., pp. 643, note (*i*), 650); nor, consequently, to what sessions the appeal must be brought, in cases where the next quarter sessions after the recognisances have been entered into do not allow time for giving the length of notice stated in the text, *supra*.

the question of value which was before the special sessions (*k*). They have power to award costs (*l*); and may order the party successful before them to receive his costs incurred at special sessions also (*m*).

SUB-SECT. 3.—*Appeals Direct to Quarter Sessions* (*n*).

Grounds of appeal.

115. A person aggrieved (*o*) by a poor rate may appeal directly to quarter sessions on any ground (*p*), provided he has fulfilled the conditions precedent (*q*).

Quarter sessions to which appeal lies.

116. The appeal lies to the "next practicable" sessions after the decision upon his objection or, where no objection is necessary (*r*), after the making of the rate (*s*); that is, to the next sessions held thereafter, to which the appellant has had time to give the required length of notice (*t*), after taking a reasonable time to decide whether he will appeal or not, and, if so, on what grounds (*u*). What is a reasonable time depends on the circumstances of each case (*a*). If the appellant might have given his notice in time, but does not do so, he must enter and respite the appeal at the next practicable sessions (*b*).

County or borough sessions.

The appeal goes to county quarter sessions, unless the union concerned is in a quarter sessions borough, in which case it goes to the recorder (*c*); if the union extends into two counties or two such boroughs, or into such a borough and a county, it may be brought before either court (*d*).

Notice of appeal.

117. Notice of appeal in writing must be given to the assessment committee twenty-one days before the first day of the quarter sessions (*e*); and fourteen clear days' notice before that day must

(*k*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), ss. 6, 7.

(*l*) *Ibid.*, s. 6.

(*m*) *R.* v. *Cornwall Justices*, [1903] 2 K. B. 178.

(*n*) As to costs, special case, arbitration, and other matters relating to appeals to quarter sessions, see title MAGISTRATES, Vol. XIX., pp. 642 *et seq.*

(*o*) See p. 49, *ante*.

(*p*) Poor Relief Acts, 1601 (43 Eliz. c. 2), s. 5; 1743 (17 Geo. 2, c. 38), s. 4.

(*q*) If the conditions apply; see pp. 58, 59, *ante*.

(*r*) As to when objection may be unnecessary, see p. 58, *ante*.

(*s*) *R.* v. *Sussex Justices* (1812), 15 East, 206; *R.* v. *Biggleswade Union Guardians* (1869), 21 L. T. 494; see p. 53, *ante*.

(*t*) See the text, *infra*.

(*u*) *R.* v. *Surrey Justices* (1880), 6 Q. B. D. 100, 110.

(*a*) *R.* v. *Sussex Justices*, *supra*; *R.* v. *Essex Justices* (1817), 1 B. & Ald. 210; *R.* v. *Carmarthen Justices* (1893), 2 Ryde's Rating Appeals (1891-1893), 334, C. A. The time allowed may be very short (*Liverpool Gas Co.* v. *Everton* (1870), L. R. 6 C. P. 414). The decision of quarter sessions on such a question may be reviewed on prohibition (*ibid.*).

(*b*) See p. 62, *post*. But apparently he need not do so if he has had no time to give the notices, for in such a case the "next" are not the "next practicable" quarter sessions.

(*c*) Poor Relief Act, 1743 (17 Geo. 2, c 38), s. 4; Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 154, 162, 165. As to a corporation or franchise not having more than six justices, see Poor Law (Appeals) Act, 1820 (1 Geo. 4, c. 36).

(*d*) Poor Law Amendment Act, 1867 (30 & 31 Vict. c. 106), s. 27.

(*e*) Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict.

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be given to the other parties entitled (*f*). Those other parties are, (1) any person whose under-assessment or omission from the rate is complained of (*g*); and (2) the parish council (*h*), in a rural parish where there is one (*i*); in any other rural parish, either the overseers (*k*) or, if so ordered, the parish meeting (*l*); in an urban parish, either the urban authority, if it has by order been given this right of the overseers (*m*), or, if there is no such order, the churchwardens and overseers (*n*). Where churchwardens and overseers are entitled to notice, service on two of them is sufficient (*n*).

Appeal entered and respited.

If no notice of appeal is given to the overseers, or the body substituted (*o*) for them (*p*), or to the assessment committee (*q*), or to third parties (*r*), or if such notice is not given the requisite number of days before the quarter sessions (*q*), the appellant may go, as of right, to the next practicable quarter sessions and have his appeal entered and respited to the then next quarter sessions; and at the latter sessions it must be heard and decided (*s*).

Form and contents of notice.

The notice must specify the grounds of appeal in such a way that the respondent may know what case is made against him (*t*);

c. 39), s. 1; *R.* v. *Surrey Justices* (1813), 1 M. & S. 479; *R.* v. *Lancashire Justices* (1857), 8 E. & B. 563. For form of notice, see Encyclopædia of Forms and Precedents, Vol. XI., p. 230. As to the method of service on the assessment committee, see Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 42.

(*f*) Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), s. 1; and see title MAGISTRATES, Vol. XIX., p. 650. As to the meaning of clear days, see title TIME.

(*g*) Poor Rate Act, 1801 (41 Geo. 3, c. 23), s. 6; *R.* v. *Brooke* (1829), 9 B. & C. 915; and see p. 49, *ante*.

(*h*) A parish council may be served by its clerk (Local Government Act, 1894 (56 & 57 Vict. c. 73), Sched. I., Part II., r. 15); and see title LOCAL GOVERNMENT, Vol. XIX., p. 241.

(*i*) Poor Rate Act, 1801 (41 Geo. 3, c. 23), s. 4; Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 6 (1) (c); *R.* v. *Tewkesbury Justices*, [1903] 1 K. B. 39; and see title LOCAL GOVERNMENT, Vol. XIX., p. 247.

(*k*) Poor Rate Act, 1801 (41 Geo. 3, c. 23), s. 4; Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 5 (2).

(*l*) Poor Rate Act, 1801 (41 Geo. 3, c. 23), s. 4; Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 19 (10); and see title LOCAL GOVERNMENT, Vol. XIX., pp. 258, 379.

(*m*) Poor Rate Act, 1801 (41 Geo. 3, c. 23), s. 4; Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 33 (1). But not if under the latter provision it has been merely given the power of appointing the overseers; and see title LOCAL GOVERNMENT, Vol. XIX., p. 267.

(*n*) Poor Rate Act, 1801 (41 Geo. 3, c. 23), s. 4.

(*o*) See the text, *supra*.

(*p*) *R.* v. *de Grey*, [1900] 1 Q. B. 521.

(*q*) *Denaby Overseers* v. *Denaby and Cadeby Main Collieries, Ltd.*, [1909] A. C. 247.

(*r*) *R.* v. *Eyre* (1856), 6 E. & B. 992.

(*s*) Poor Relief Act, 1743 (17 Geo. 2, c. 38), s. 4. If the requisite notices have been given, the quarter sessions need not grant a respite unless they think fit (*R.* v. *Eyre* (1857), 7 E. & B. 609).

(*t*) Poor Rate Act, 1801 (41 Geo. 3, c. 23), s. 4; Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), ss. 1, 3; *R.* v. *Sheard* (1824), 2 B. & C. 856. As to the appellant being limited in appeal to the grounds taken on objection, see p. 58, *ante*. If he takes other grounds as well, his notice is, nevertheless, good as to those grounds which are open to him (*R.* v. *Kent Justices* (1870), L. R. 6 Q. B. 132); but quarter sessions cannot deal with any ground not raised in the notice (*R.* v. *Bromyard* (*Inhabitants*) (1828),

and it must be signed by the appellant or his attorney (*a*). Any number of persons having a joint grievance against the rate may join in giving one notice of appeal (*b*); and the same appellant may appeal in one notice against more than one poor rate (*c*). The quarter sessions may allow amendment of an imperfect or incorrect ground of appeal (*d*).

Liability notwithstanding notice.

The giving of notice of appeal does not excuse payment, on account of the rate appealed against, of a sum equivalent to that at which the appellant was assessed to the last effective rate (*e*).

Costs of assessment committee.

118. The assessment committee is entitled to appear as respondent to the appeal, in the name of the guardians and with their consent, given at an ordinary meeting, after notice has been sent to every guardian (*f*). If it so appears, costs ordered to be paid by it may be recovered from the guardians (*g*): if it does not so appear it is not liable for costs (*h*); but the overseers, or the body substituted for them for the purpose of receiving notice of appeal (*i*), are so liable, whether they appear or not (*j*). If the assessment committee appears without the consent of the guardians, it cannot recover costs (*k*).

8 B. & C. 240). For grounds of objection and appeal, see Encyclopædia of Forms and Precedents, Vol. XI., pp. 224—264.

(*a*) Poor Rate Act, 1801 (41 Geo. 3, c. 23), s. 4; Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), s. 1. It is probably good if signed by a person authorised to do so by either the appellant or his attorney; see *R.* v. *Kent Justices* (1873), L. R. 8 Q. B. 305.

(*b*) *R.* v. *White* (1792), 4 Term Rep. 771; *R.* v. *Sussex Justices* (1812), 15 East, 206. This procedure is not advisable where questions of value of various hereditaments are to be raised.

(*c*) *R.* v. *Suffolk Justices* (1818), 1 B. & Ald. 640. But under modern conditions as to the making of rates, considerations of time usually prevent this being done.

(*d*) Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), ss. 3, 9.

(*e*) Poor Rate Act, 1801 (41 Geo. 3, c. 23), s. 2. As to repayment in the case of a successful appeal, see p. 64, *post*.

(*f*) Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 2; *Smith* v. *Leigh Union*, [1904] 1 K. B. 484, C. A. As to legal proceedings affecting boards of guardians, see title POOR LAW, Vol. XXII., pp. 539 *et seq.* If there are several appeals by the same appellant, raising the same issue, a consent is, nevertheless, required in the case of each appeal (*R.* v. *Essex Justices*, [1895] 1 Q. B. 38, C. A.; affirmed *sub nom. West Ham Union* v. *Essex Justices and London County Council*, [1896] A. C. 443).

(*g*) *Ibid.* The costs cannot be recovered where taxation is delayed beyond the three months limited by the Poor Law (Payment of Debts) Act, 1859 (22 & 23 Vict. c. 49), s. 1; and see title POOR LAW, Vol. XXII., p. 536; *Midland Rail. Co.* v. *Edmonton Union (Guardians)*, [1895] A. C. 485).

(*h*) *Leicester Waterworks Co.* v. *Nuttall* (1878), 4 Q. B. D. 18; *R.* v. *Salop Justices* (1896), 60 J. P. 552; followed in *R.* v. *London Justices* (1907), 2 Konstam's Rating Appeals, 587. Neither, apparently, are the guardians so liable (*R.* v. *Salop Justices, supra*).

(*i*) See p. 62, *ante*.

(*j*) *R.* v. *Cambridge Justices* (1834), 2 Ad. & El. 370. The committee need not actively contest the appeal unless it sees reasonable ground for doing so (*R.* v. *Fouch* (1841), 2 Q. B. 308). Under certain circumstances parishes and unions may combine to defend a group of appeals in which some common point is raised (Poor Law Audit Act, 1848 (11 & 12 Vict. c. 91), s. 11; Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 29).

(*k*) *West Ham Union* v. *Essex Justices and London County Council, supra*.

SECT. 4. Remedies of Ratepayers.

119. Upon the hearing of an appeal to quarter sessions overseers must produce the rate-book (*l*) and the valuation list (*m*).

Production of rate-book.

120. The quarter sessions regulate their own practice on these appeals (*n*). On the question whether, in appeals against rates, appellants or respondents should begin, the practice is not uniform (*o*).

Practice on appeals.

Powers of quarter sessions.

121. The quarter sessions may, if they allow the appeal, either amend the entry as to the hereditament affected, or insert a hereditament the omission of which is complained of (*p*), or quash the rate (*q*). They have no power to increase the assessment alleged by the appellant to be too high (*r*); and if, even at the hearing, an appellant accepts the gross value appearing in the rate, the quarter sessions must find the proper statutable deductions and fix the rateable value by making the deductions so found from that gross value (*s*).

When repayment ordered.

If the rate is quashed, the money charged by the rate must be paid and credited against the next effective rate (*t*). But, if the appellant's assessment is amended or struck out by the quarter sessions, a refund by the overseers of the amount overpaid must be ordered by the quarter sessions (*u*) which makes the final order in the appeal (*a*). Credit may, however, be given by the overseers against subsequent rates although the quarter sessions have made no such order (*b*). If the gross and rateable values appearing in the valuation list are

(*l*) Poor Relief Act, 1743 (17 Geo. 2, c. 38), s. 13.

(*m*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 23.

(*n*) As to the practice and powers of quarter sessions generally, and in such matters as costs, arbitration, and stating special cases, see title MAGISTRATES, Vol. XIX., pp. 642 *et seq.* Only those matters which affect rating appeals are dealt with in the text, *supra*.

(*o*) As to the advantages of either course, see *R.* v. *Newbury* (*Inhabitants*) (1791), 4 Term Rep. 475; *R.* v. *Topham* (1810), 12 East, 546; *R.* v. *Suffolk Justices* (1817), 6 M. & S. 57.

(*p*) Poor Relief Act, 1743 (17 Geo. 2, c. 38), s. 6; Poor Rate Act, 1801 (41 Geo. 3, c. 23), ss. 1, 6; *R.* v. *Ringwood* (*Inhabitants*) (1775), 1 Cowp. 326; *R.* v. *Ambleside* (*Inhabitants*) (1812), 16 East, 380; *R.* v. *Bedminster Union* (1876), 1 Q. B. D. 503. If the person the omission of whose hereditament is complained of has not been given notice of the appeal, the quarter sessions cannot amend the rate (*R.* v. *Brooke* (1829), 9 B. & C. 915).

(*q*) Poor Relief Act, 1743 (17 Geo. 2, c. 38), s. 6; Poor Rate Act, 1801 (41 Geo. 3, c. 23), s. 1; *R.* v. *Hull Dock Co.* (1824), 3 B. & C. 516, 526. This is very rarely done. An order to quash a rate is not bad because it does not order a new rate to be made (*R.* v. *Hampshire Justices* (1864), 33 L. J. (M. C.) 104).

(*r*) *R.* v. *Great Western Rail. Co.* (1846), 6 Q. B. 179, 207; *Horton & Son* v. *Walsall Assessment Committee*, [1898] 2 Q. B. 237, 243; *Mersey Docks and Harbour Board* v. *Birkenhead Assessment Committee*, [1901] A. C. 175, 183.

(*s*) *Horton & Son* v. *Walsall Assessment Committee*, *supra*; *Denaby and Cadeby Colliery Co.* v. *Doncaster Union Assessment Committee* (1898), 78 L. T. 388; *Brown & Co.* v. *Rotherham Union Assessment Committee* (1900), 64 J. P. 580.

(*t*) Poor Rate Act, 1801 (41 Geo. 3, c. 23), s. 1; but see also *ibid.*, s. 3; *R.* v. *Kingston Justices and Wedd* (1858), E. B. & E. 259.

(*u*) Poor Rate Act, 1801 (41 Geo. 3, c. 23), s. 8. As to payment of rates when notice of appeal has been given, see p. 63, *ante*.

(*a*) *R.* v. *St. Peter's Liberty, York, Justices* (1832), 4 B. & Ad. 342; *Priestley* v. *Watson* (1834), 2 Cr. & M. 691.

(*b*) *R.* v. *Parker* (1857), 7 E. & B. 155.

accepted, and the only ground of appeal is that the overseers have not amended the rate so as to correspond with an amendment made by the assessment committee (*c*), the quarter sessions must amend the rate and order repayment of any money paid after the notice of objection was given (*d*). Where the rate has been made payable in instalments (*e*), an order for repayment must be made applying to the whole of the rate (*f*).

Disqualification of justices.

122. A guardian who, though not a member of the assessment committee, takes an active part in getting up its case, is disqualified from sitting upon a rating appeal to which the assessment committee is respondent (*g*). A member of an adjoining assessment committee is not as such disqualified (*h*); nor is a member of a county council who took an active part in promoting a tramway undertaking owned by the council thereby disqualified for hearing a rating appeal brought by the lessees of that undertaking (*i*); but a justice cannot sit at county quarter sessions to hear an appeal against a rate made for a parish in which he is a ratepayer (*k*).

A judge of the High Court or Court of Appeal is not disqualified from taking part in any judicial proceeding with regard to a rate (*l*) by the fact that he is a person affected by that rate (*m*).

SECT. 5.—*Remedies of Overseers.*

Objection.

123. The overseers (*n*) of a parish may object to the valuation list of any parish in the union (*o*) before it is finally approved.

(*c*) Under the Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1; see p. 57, *ante*.

(*d*) *R.* v. *Great Western Rail. Co.* (1874), 38 J. P. 822; see p. 58, *ante*. It is doubtful whether this decision applies where the rate is paid before notice of objection is given.

(*e*) See p. 53, *ante*.

(*f*) *Imperial and Grand Hotels Co.* v. *Christchurch Guardians*, [1905] 1 K. B. 89, C. A.

(*g*) *R.* v. *Cumberland Justices, Ex parte Midland Rail. Co.* (1888), 58 L. T. 491. Disqualification is fully dealt with in title MAGISTRATES, Vol. XIX., pp. 550 *et seq.* Only matters decided in connection with rating appeals are mentioned in the text, *supra*; as to appeals to special sessions, see pp. 59, 60, *ante*.

(*h*) *R.* v. *London Justices, Ex parte South Metropolitan Gas. Co.* (1908), 2 Konstam's Rating Appeals, 642; 72 J. P. 137, C. A.; compare *R.* v. *Suffolk Justices* (1818), 1 B. & Ald. 640; and see p. 60, *ante*.

(*i*) *R.* v. *Middlesex Justices, Ex parte Hendon Union Assessment Committee* (1908), 2 Konstam's Rating Appeals, 754; 72 J. P. 251.

(*k*) Justices Jurisdiction Act, 1742 (16 Geo. 2, c. 18), s. 3; *R.* v. *Essex Justices* (1816), 5 M. & S. 513, 517; Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 6; compare *R.* v. *Cambridge Recorder* (1857), 8 E. & B. 637. The statement in the text, *supra*, does not apply to special sessions; see p. 60, *ante*.

(*l*) Such as a special case stated by quarter sessions on an appeal against a rate; see title MAGISTRATES, Vol. XIX., p. 665.

(*m*) Jurisdiction in Rating Act, 1877 (40 & 41 Vict. c. 11), ss. 1, 3.

(*n*) Or some body representing the overseers; see p. 46, *ante*. As to the bodies to whom the rights of overseers to object and appeal and the right of the vestry to sanction an appeal have been transferred, see title LOCAL GOVERNMENT, Vol. XIX., pp. 246, 247, 267.

(*o*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103),

SECT. 5. Remedies of Overseers.

Right of appeal.

The overseers (*p*) also have a right of appeal to quarter sessions, upon questions of value, against a new or supplemental valuation list made for their own or any other parish in the union; and such an appeal is brought to the first quarter sessions held more than a month after the final approval and deposit of the list; fourteen clear days' notice of appeal is required (*q*).

SECT. 6.—*Collection.*

SUB-SECT. 1.—*Method of Collection.*

Collection of rate and arrears.

124. The poor rate is collected under the superintendence of the overseers by the collector or assistant overseer (*r*), if there is one (*s*), if not, by the overseers themselves (*t*). Arrears of a rate may be collected after the period of the rate has expired and by the successors of the overseers who made the rate (*u*).

Necessity for demand.

125. The obligation to pay the poor rate arises whether it is demanded or not (*v*). But proceedings for recovery (*a*) cannot be taken unless there has been a demand and a neglect or refusal to pay (*b*). Except in certain very small parishes, the demand must

ss. 18, 21; see pp. 46, 47, *ante*. The right of objection "at any time" after the valuation has been finally approved, which is conferred by the Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1 (see p. 57, *ante*), does not extend to overseers as such.

(*p*) See note (*n*), p. 65, *ante*.

(*q*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 32—34. Owing to the limit of time indicated, the overseers have no right of appeal against a valuation list of old standing; and it is doubtful if they have any direct means of securing the making of a new valuation list for their own parish, or of a supplemental valuation list for any other parish in the union. As to the making of such lists, see pp. 47 *et seq.*, *ante*. The right of appeal described is rarely used; for the procedure, see *ibid.*; and for an instance of such an appeal, see *Sunderland-near-the-Sea Overseers* v. *Sunderland Union Guardians* (1865), 18 C. B. (N. S.) 531.

(*r*) The assistant overseer is not the servant of the overseers, but of the parish; see *Hornchurch Overseers* v. *London, Tilbury and Southend Railway* (1912), 76 J. P. 385.

(*s*) Poor Relief Act, 1601 (43 Eliz. c. 2), s. 2; *Yewdall* v. *Craven* (1864), 29 J. P. 197.

(*t*) Compare *R.* v. *Gwyer* (1834), 2 Ad. & El. 216.

(*u*) Arrears of poor rates may be collected by or under the direction of the overseers for the time being (Poor Relief Act, 1743 (17 Geo. 2, c. 38), s. 11; *East Dean Overseers* v. *Everett* (1861), 3 E. & E. 574); and see *R.* v. *Blenkinsop*, [1892] 1 Q. B. 43.

(*v*) There may be a breach of a covenant to pay rates which have not yet been demanded (*Davis* v. *Burrell* (1851), 10 C. B. 821); and see title LANDLORD AND TENANT, Vol. XVIII., p. 492, note (*k*).

(*a*) For a full account of these, and, as to the objections which may be raised on such proceedings, see title DISTRESS, Vol. XI., pp. 210 *et seq.* As to appeals to quarter sessions against the issue of a distress warrant, see *ibid.*, p. 214. Recognisances to appear at quarter sessions are not required (*R.* v. *Lincolnshire Justices*, [1912] 2 K. B. 413); compare title MAGISTRATES, Vol. XIX., p. 644. It should be noted that where actual occupation is not contested the question whether that occupation is or is not beneficial cannot be raised upon such proceedings (*R.* v. *Bradshaw* (1860), 2 E. & E. 836; *Mersey Docks* v. *Cameron* (1861), 9 C. B. (N. S.) 812; *R.* v. *Sinclair and London Exhibitions Co.* (1896), 12 T. L. R. 466).

(*b*) Poor Relief Acts, 1601 (43 Eliz. c. 2), s. 2; 1814 (54 Geo. 3, c. 170), s. 12.

be in writing and in a prescribed form (*c*). It may be served by any person having authority from the overseers or collector (*d*).

Accounts of collection.

126. The accounts of collection of the rate are kept in the rate-book (*e*), which is balanced half-yearly (*f*). Closed rate-books are kept by the overseers (*g*).

Receipts.

127. Except in very small parishes, a rate-receipt check-book in a prescribed form must be kept, and a receipt taken from the book, dated and stamped in the usual manner, must be given to the person paying the rate or an instalment thereof if the rate is payable in instalments; but no receipt is given from the book until the whole rate or instalment has been paid (*h*).

Tender.

128. If, at any time before commitment, a defaulter tenders the rate, with costs to the date of the tender, the tender must be accepted and distress proceedings stopped (*i*). If a part of the rate is tendered, the justices may nevertheless issue a distress warrant for the whole (*k*); but they need not do so, even if the tender of the part is made in court for the first time (*l*). The acceptance of a bill of exchange (*m*), or a payment made, without the authority or consent of the overseers, before the rate is made (*n*), is not a payment of the rate.

SUB-SECT. 2.—*Change of Occupation: Inability to Pay.*

Change of occupation.

129. Where a person comes into or goes out of occupation during the period of a rate, he is only liable to pay a sum bearing the same proportion to the whole of the rate as the length of his occupation within the period of the rate bears to that period (*o*).

(*c*) General Order of the Local Government Board of the 14th June, 1875; see Mackenzie's Overseers' Handbook, 7th ed., p. 516, Appendix E. A separate form for parishes containing agricultural land is prescribed by the General Order of the 13th April, 1897 (Stat. R. & O. Rev., Vol. X., Poor, England, p. 535).

(*d*) *Yewdall* v. *Craven* (1864), 29 J. P. 197.

(*e*) Columns for this purpose appear in the prescribed form of rate-book; see p. 55, *ante*. Certain subsidiary books and statements are prescribed by the General Accounts and Audit Order of the 14th January, 1867 (Stat. R. & O. Rev., Vol. X., Poor, England, p. 301).

(*f*) General Order, of the 8th September, 1903 (Stat. R. & O. Rev., Vol. X., Poor, England, p. 537). As to audit, see title POOR LAW, Vol. XXII., pp. 550 *et seq.*

(*g*) Like other parochial accounts (Poor Relief Act, 1743 (17 Geo. 2, c. 38), s. 1); but where there is a vestry clerk for the parish he has custody of the closed rate-books unless otherwise ordered (Vestries Act, 1850 (13 & 14 Vict. c. 57), s. 7). As to inspection of the rate-book, see p. 56, *ante*.

(*h*) General Order for Accounts (Unions) of the 14th January, 1867, art. 34. The form is prescribed by the Orders referred to in note (*c*), *supra*.

(*i*) Distress for Rates Act, 1849 (12 & 13 Vict. c. 14), s. 6. As to the requisites of tender, see title CONTRACT, Vol. VII., pp. 417 *et seq.*

(*k*) *Ex parte Wyles* (1903), 68 J. P. 13. As to distress practice generally, see title DISTRESS, Vol. XI., pp. 210 *et seq.*

(*l*) *R.* v. *Gillespie*, [1904] 1 K. B. 174.

(*m*) *Smith* v. *Barham* (1887), 51 J. P. 581.

(*n*) *Hornchurch Overseers* v. *London, Tilbury and Southend Railway* (1912), 76 J. P. 385. Payment of rates by a person who is not the person rated and has no authority from him to pay them is not a payment for the purposes of the franchise (*R.* v. *Bridgnorth* (*Mayor*) (1839), 10 Ad. & El. 66), or of pauper settlement (*R.* v. *Benjeworth* (*Inhabitants*) (1854), 3 E. & B. 637); but it is probably sufficient to prevent distress proceedings being taken.

(*o*) Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41),

SECT. 6. Collection.

New house.

Where a new house or building comes into occupation for the first time during the currency of a rate, a proportion only of the rate can be recovered from the occupier (*p*).

Period from and to which rate runs.

The period of the rate begins with the day on which the rate was allowed (*q*) and ends with the day shown in the heading of the rate (*r*) as the date to which the expenses for which the rate is made have been estimated (*s*).

Inability to pay.

130. Upon proof of the inability of any person to pay the rate, and upon his application, made with the consent of the overseers, two justices having jurisdiction in the parish may excuse payment and strike the person's name out of the rate (*t*).

Recovery from representatives of deceased or insolvent parties.

131. It is uncertain whether a poor rate is recoverable from the representatives of a person dying solvent after the rate is made (*u*). The law as to recovery from a person dying insolvent after the rate is made is the same as with regard to other insolvents (*a*). The poor rate is among the debts which have priority in bankruptcies (*b*), and in winding-up by the court (*c*), and upon the appointment of a receiver on behalf of debenture-holders, or upon possession being taken by them (*d*). The liquidator or receiver may become liable for rates accruing due after he enters upon the management, and may in certain circumstances be distrained upon with leave of the court (*e*).

s. 16; Poor Rate Assessment and Collection Act, 1869, Amendment Act, 1882 (45 & 46 Vict. c. 20), s. 3; p. 56, *ante*.

(*p*) Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 38; see p. 54, *ante*. Probably the principle of apportionment indicated on p. 67, *ante*, applies.

(*q*) See p. 56, *ante*.

(*r*) See p. 54, *ante*.

(*s*) *R.* v. *Tempest, Ex parte Townend* (1898), 14 T. L. R. 199; *Davis* v. *Woodfield* (1900), 64 J. P. 215; *Cheney* v. *Tallowin*, [1904] 2 K. B. 763. A distress warrant may issue in such a case for the smaller sum found to be due from an outgoing occupier, although the only demand has been for the whole rate (*Mansel* v. *Itchen Overseers*, [1906] 1 K. B. 221); as to distress for rates, generally, see title DISTRESS, Vol. XI., pp. 210 *et seq.*

(*t*) Poor Relief Act, 1814 (54 Geo. 3, c. 170), s. 11. Apart from this provision, poverty is no defence to a claim for poor rate; as to distress for rates, generally, see title DISTRESS, Vol. XI., pp. 210 *et seq.*

(*u*) There is no enactment or decision to the contrary, but the right to recover has been doubted; compare *Stevens* v. *Evans* (1761), 2 Burr. 1152.

(*a*) Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), s. 1 (6); *Re Heywood, Parkington* v. *Heywood*, [1897] 2 Ch. 593; see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 217.

(*b*) See the Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62); title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 217.

(*c*) Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 209; see title COMPANIES, Vol. V., p. 516.

(*d*) Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 107 (1); see title COMPANIES, Vol. V., pp. 375 *et seq.*

(*e*) See title COMPANIES, Vol. V., p. 537, note (*e*). The decisions as to whether, when a liquidator is named as occupier in the rate-book, a distress warrant can issue against him personally are conflicting; in *R.* v. *Leslie, R.* v. *Curzon* (1882), 46 L. T. 159, it was held that a warrant could not be so issued; in *Dent* v. *Commondale Overseers* (1891), 55 J. P. 805, it

SECT. 6. Collection.

Promoters who have acquired land under the Lands Clauses Acts (*f*) are bound to make up the deficiency in the poor rate during the construction of the works (*g*).

Promoters acquiring land compulsorily.

SUB-SECT. 3.—*Collection from Owners.*

Liability to pay in full.

132. Where an owner who has become (*h*) liable to pay the poor rate omits or neglects to pay, before the 5th June, any rate or instalment which became due before the preceding 5th January and has been duly demanded, he becomes liable to pay the rate or instalment in full, and forfeits any commission or allowance to which he would otherwise have been entitled (*i*).

Limit to right of recovery against occupier, and occupier's rights as against owner.

The poor rate may be recovered from an owner so liable in the same way as from an occupier (*j*), but it may also be recovered from the occupier to the extent of the rent due from him, provided it has been demanded from him fourteen days previously (*k*). If the owner fails to pay a poor rate which he has in any way become liable to pay, the occupier may pay the rate (*l*). In either case the occupier who pays or has the rate recovered from him may deduct from his rent the amount paid or recovered (*m*).

Part IV.—Rates, Other than Poor Rate, Leviable Outside the Metropolis.

SECT. 1.—*County Rate.*

SUB-SECT. 1.—*Nature and Purposes.*

"County rate."

133. A county council raises money required for general county purposes by a levy on all the parishes in the county, and money required for any special county purpose by a levy on any parish or parishes liable to be assessed for the purpose in question (*n*). In either case the county council makes a "county rate," that is, a rate

was held that it could. As to the liability of receivers for rates, see title RECEIVERS, pp. 401 *et seq.*, *post*. As to the rateable occupation of liquidators and receivers, see p. 11, *ante*.

(*f*) See title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 12 *et seq.*

(*g*) Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 133; see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 16—18.

(*h*) Under the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41).

(*i*) *Ibid.*, s. 5. As to commission and allowances to owners, see p. 20, *ante*.

(*j*) Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 11.

(*k*) *Ibid.*, s. 12.

(*l*) *Ibid.*, s. 8.

(*m*) *Ibid.*, ss. 8, 12 (3).

(*n*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 68. As to county finance, see title LOCAL GOVERNMENT, Vol. XIX., pp. 357 *et seq.* As to the county rate, see, further, *ibid.*, pp. 359 *et seq.*

SECT. 1. County Rate.

on each parish (*o*) liable to contribute (*p*), and the sum to be levied from any parish in accordance with such rate is called a "county contribution" (*q*).

County contributions.

County contributions may be made retrospective so far as to raise money for the payment of costs incurred or which have become payable at any time within six months before the demand of the contributions (*r*).

Precepts.

134. The demand for county contributions is made by means of precepts. A precept may include, but must show as separate items, contributions required both for general and special county purposes (*s*). It is addressed to the guardians of the union which includes the parish liable to the contribution, or to the guardians of the parish if it is not in union; the guardians in their turn include the amount of the contribution required from them in a precept to the overseers of the parish (*t*), and the overseers levy the sum thus required from them as part of the poor rate (*u*).

The county rate as part of the poor rate.

135. When demanded of the ratepayer, a county rate (or contribution) thus forms part of the poor rate; and the liability of promoters, under the Lands Clauses Acts (*a*), to make good a deficiency in the poor rate extends to that portion of the rate which is raised for county purposes (*b*).

(*o*) This apparently includes parishes in liberties and franchises which were formerly exempt (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 48 (1), (2)). For the meaning of the term "county rate," see title LOCAL GOVERNMENT, Vol. XIX., p. 359, note (*n*).

(*p*) County Rates Act, 1852 (15 & 16 Vict. c. 81), ss. 21, 26; Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 3 (1), 68 (6); and, as to the making of the rate, see title LOCAL GOVERNMENT, Vol. XIX., p. 360; and see p. 74, *post*. It has been thought that it is sufficient for the county council to issue precepts without the previous formality of making a rate; but it is submitted that this view is inconsistent with the sections last cited. The county rate, being paid out of the poor rate, is a "parochial" tax (*R.* v. *Aylesbury with Walton* (*Inhabitants*) (1846), 9 Q. B. 261).

(*q*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 68 (4), (5).

(*r*) *Ibid.*, s. 68 (9). Retrospectiveness may apparently not go further than is there provided; see *R.* v. *Flintshire Justices* (1822), 5 B. & Ald. 761; compare *Cortis* v. *Kent Water-works Co.* (1827), 7 B. & C. 314; compare also a somewhat similar provision with regard to the general district rate in the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 210; see p. 83, *post;* see also title LOCAL GOVERNMENT, Vol. XIX., p. 360.

(*s*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 68 (6).

(*t*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 26. Where a parish is partly within and partly outside a borough, the borough not being subject to the county rate, the precept must be sent direct to the overseers, who raise the money required by a separate rate (*ibid.*, ss. 32—35); but such cases must now be extremely rare; see the Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 1 (3), 36 (2). It is only in these cases that a county rate, as such, is demanded directly from the individual ratepayer.

(*u*) The provision for collection of the county rate by the collector of the poor rate contained in the Poor Law Amendment Act, 1866 (29 & 30 Vict. c. 113), s. 13, appears to be no longer necessary.

(*a*) As to the Lands Clauses Acts, see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 12 *et seq.* As to such liability, see pp. 19, 69, *ante*.

(*b*) Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 133; *Farmer* v. *London and North Western Rail. Co.* (1888), 20 Q. B. D. 788.

SUB-SECT. 2.—*The County Rate Basis.*

SECT. 1. County Rate.

136. The amounts required for general or for special county purposes are assessed on the various parishes liable to contribute for such purposes in proportion to the values shown in respect of each such parish in the "county rate basis" (*c*). General purpose.

137. The basis must show, in respect of each parish in the county, a sum which in the opinion of the council represents the total value of all property, including empty hereditaments (*d*), in the parish rateable to the poor, such value being estimated on the same principles as rateable value for poor rate purposes (*e*); and the total value of the agricultural land in the parish must be stated separately from the total value of the buildings and other hereditaments (*f*). Particulars specified.

138. The basis is usually prepared by a committee of the county council, called the "county rate basis committee" (*g*). Apparently a new basis may be prepared at any time (*h*). By whom prepared.

139. The committee may require from overseers and rate collectors returns in writing of the value of property within their parish and of certain particulars regarding the last valuation of such property; but, before presenting these returns, overseers must lay them before the vestry meeting or before the body which exercises the functions of a vestry meeting (*i*). The committee may also require overseers and any other persons to produce rates, valuations and other documents in their possession, relevant to the value of the property assessable, and may examine such persons on oath (*k*); and the committee may even call for private accounts and documents and examine private persons on oath (*l*). The committee may also obtain copies of the total amount assessed in each parish in respect of imperial taxes from the clerk to the Commissioners (*m*) of those Powers of county rate basis committee in making the basis.

(*c*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 21.

(*d*) *R.* v. *Hammersmith Overseers* (1859), 7 W. R. 524.

(*e*) County Rates Act, 1852 (15 & 16 Vict. c. 81), ss. 6, 21. The council need not accept the poor rate assessments; consequently the value shown in the county rate basis is not necessarily equal to the total of the actual poor rate assessments in the parish; and in practice there are often wide divergences. As to what property is rateable to the poor, see pp. 3 *et seq.*, *ante*; and, as to the principles for ascertaining rateable value, see pp. 25 *et seq.*, *ante*.

(*f*) Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), s. 5 (b); see p. 23, *ante*.

(*g*) The power and duty of preparing the basis are vested in the county council (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (i.)); but it may delegate these to a committee (*ibid.*, s. 28 (2)), and usually does so in practice. The procedure is therefore described in the text, *supra*, on the assumption that this is done. Where no such delegation is made, the county council as a whole performs the functions ascribed in the text to the county rate basis committee. As to committees of the county council, see title LOCAL GOVERNMENT, Vol. XIX., pp. 348 *et seq.*

(*h*) Compare County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 13.

(*i*) *Ibid.*, s. 5. As to the bodies in which the powers of a vestry may now reside, see title LOCAL GOVERNMENT, Vol. XIX., pp. 246, 261, 267; Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 6 (1) (a), 33 (1).

(*k*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 7.

(*l*) *R.* v. *Doubleday* (1861), 3 E. & E. 501.

(*m*) As to the Commissioners, see title INCOME TAX, Vol. XVI., pp. 613 *et seq.*

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taxes (*n*), but may not call for any document relating to the income tax upon profits with respect to concerns in the nature of trade which are chargeable under Schedule A (*o*) of the Income Tax Acts (*p*). Penalties are enacted for refusing to comply with these provisions, except that relating to imperial taxes (*q*). The clerk of each assessment committee (*r*) must send every December to the county rate basis committee copies of the totals of the gross estimated rental (*s*) and rateable value (*t*) of the property included in the valuation list in force in each parish of the union (*u*), and the total rateable value of the agricultural land in each parish must be stated separately from the total rateable value of buildings and other hereditaments (*v*). The county rate basis committee may at any time by order in writing direct a valuation of the whole or any part of a parish, and may appoint persons to make the valuation, who may enter and survey the assessable property (*w*); and the expenses of such a valuation may in certain circumstances be imposed upon the parish (*x*). The making of the county rate basis is not subject to any of the provisions as to procedure which apply to a poor rate valuation list (*y*).

Allowance and confirmation of county rate basis.

140. When a new basis has been prepared in which the total value of the property in any parish is altered a copy must be sent to the overseers of each parish, who must submit the copy to the vestry (*z*), or the successors of the vestry (*a*). With the copy a notice must be sent of a time, not less than a month after the date of the notice, within which objections against the basis may be forwarded by the overseers or by any person affected (*b*). The copy of the basis, while it is in the overseers' possession, must be open to the inspection of every ratepayer (*c*). Before the basis is allowed and confirmed, notice must be published in one or more local newspapers that the basis will be taken into consideration (*d*), and it is submitted that any objections which have been forwarded to the committee must be considered on this occasion (*e*). If any

(*n*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 7.
(*o*) As to Schedule A, see title INCOME TAX, Vol. XVI., pp. 619 *et seq.*
(*p*) Revenue Act, 1863 (26 & 27 Vict. c. 33), s. 22.
(*q*) County Rates Act, 1852 (15 & 16 Vict. c. 81), ss. 8, 10. The penalty for refusal to make returns, or to attend or produce documents, is a fine not exceeding £20 (*ibid.*, s. 8).
(*r*) As to the assessment committee, see p. 46, *ante*.
(*s*) As to the meaning of "gross estimated rental," see p. 25, *ante*.
(*t*) As to rateable value, see pp. 25 *et seq.*, *ante*.
(*u*) Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 9.
(*v*) Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), s. 5 (b).
(*w*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 9.
(*x*) *Ibid.*, ss. 10, 11.
(*y*) County Rate Act, 1866 (29 & 30 Vict. c. 78), s. 1.
(*z*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 13.
(*a*) As to the body which in any given parish may be the successors of the vestry, see note (*i*), p. 71, *ante*.
(*b*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 14.
(*c*) *Ibid.*, s. 13.
(*d*) *Ibid.*, s. 15.
(*e*) There is no express provision for this; but, in effect, *ibid.*, ss. 14, 15, render necessary the consideration of objections. The modern application

alteration is made, fourteen days' notice must be sent to the parish affected before confirmation (*f*). The basis becomes valid when allowed and confirmed, notwithstanding any irregularity in procedure, but is subject to appeal; it remains in force until a new basis has been allowed and confirmed (*g*). After confirmation, a copy of the basis and a list of the parishes assessed, with the amount upon which each parish is assessed, must be sent to the overseers of every parish in the county. This must also be done on the confirmation of any alteration in an existing basis (*h*).

Revision of county rate basis.

From time to time the committee may revise an existing basis in order to meet partial changes in the value of the assessable property, the provisions as to procedure in this case being somewhat similar to those already described (*i*).

Appeal against basis.

141. Any overseer (*j*) or inhabitant of any parish, having reason to think that the parish is aggrieved by the basis, may appeal to quarter sessions against it at any time after it has been confirmed, but only upon certain specified grounds, namely, (1) that some parish is wrongly omitted from the basis; (2) that the aggrieved parish is over-assessed; and (3) that some parish, other than the aggrieved parish, is under-assessed (*k*).

Notice of appeal.

In any case, twenty-one days' notice in writing previous to the first day of quarter sessions must be given. The notice must state the cause or matter of the appeal; and, if the appeal is on ground (1) or (3) notice must be given to the overseers of the parish which is alleged to be omitted or under-assessed (*l*); if on ground (2), then to the clerk of the peace (*m*).

Powers of quarter sessions.

142. The appeal is only against the part of the basis immediately

of the provisions for procedure contained in the County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 15, is somewhat difficult in view of the transfer of powers from quarter sessions to county councils by virtue of the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (i.) (see title LOCAL GOVERNMENT, Vol. XIX., p. 368); but it appears still to be necessary that the basis should be allowed and confirmed, though apparently the county rate basis committee may exercise this function, if delegated to them by the county council.

(*f*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 15.

(*g*) *Ibid.*, s. 16. As to appeal, see the text, *infra*.

(*h*) County Rates Act, 1852 (15 & 16 Vict. c. 81), ss. 16, 26; County Rate Act, 1866 (29 & 30 Vict. c. 78), s. 2. The basis is usually made in a form corresponding to Schedule Z appended to the Agricultural Rates Order, 1896.

(*i*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 20.

(*j*) Where there is a parish council, the overseers' power of appealing against the basis is now vested in that council (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 6 (1) (c) (i.)). This power of the overseers may also be among those conferred upon a parish meeting under *ibid.*, s. 19 (10), or upon a borough or urban district council under *ibid.*, s. 33 (1); see title LOCAL GOVERNMENT, Vol. XIX., pp. 252, 258, 267, 311.

(*k*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 17. The jurisdiction to hear the appeal is specially reserved to the quarter sessions by the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 8.

(*l*) *Ibid.*, s. 17. It is submitted that in these cases notice should be given to the clerk of the county council also. As to the body which may, in the particular parish, be entitled to notice instead of the overseers, see p. 62, *ante*.

(*m*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 17. If the clerk of the county council is a different person he should be served with notice also.

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affected, and, upon the hearing, the quarter sessions can only confirm this part, or correct proved inequalities or omissions (*n*). They cannot order that any alteration made by them shall date back so as to affect a county rate made before the notice of appeal against the basis was given (*o*). There is no power to order a refund of any sum already paid (*p*). A valuation may be ordered by the court on the application of either party (*q*), and the court may order costs to be paid by either party, except where an appeal brought upon ground (2) is successful, in which case the appellant's costs are borne by the county fund (*r*).

SUB-SECT. 3.—*Making of the Rate.*

When made.

143. A county rate may be made by the county council (*s*) at any time when it is required to raise money for general or special purposes (*t*).

Assessment.

144. The rate must be made equally upon each parish liable, according to a certain pound rate, fixed and publicly declared, upon the total values as shown in the county rate basis in force (*u*), reduced by half the amount there shown as the rateable value of the agricultural land in the parish (*a*).

Particulars specified.

145. The rate should show the rate in the £ according to which it is made, the names of the parishes assessed, the total value of the property in each parish, the total value of the agricultural land in the parish, the two last-mentioned terms being taken from the basis in force, and the amount to be demanded from each parish.

Separate rate.

In practice, a separate county rate is made to provide for the expenses of a special county purpose.

Alteration by county council.

146. If the county council's estimate made at the beginning of a financial year is found at the end of the first six months to be larger

(*n*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 17. The court has apparently no power to quash the whole basis (*ibid.*, s. 17, proviso, read with Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (i.)).

(*o*) *West Riding of Yorkshire County Council* v. *Middleton Parish Council*, [1906] 2 K. B. 157. Possibly a successful appeal against the basis might be held to affect a rate made after notice given, but before the hearing of the appeal; but in such a case it is advisable to appeal against the rate also.

(*p*) Compare the powers conferred by the County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 23; see p. 76, *post*.

(*q*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 18.

(*r*) *Ibid.*, s. 19.

(*s*) The power cannot be delegated to a committee (*ibid.*, s. 21; Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 3 (i.), 28 (3)). But the duty of preparing the basis may be delegated; see p. 71, *ante*.

(*t*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 21; Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 68 (4), (5); and see pp. 69, 70, *ante*.

(*u*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 21. As to revision of the basis, see p. 73, *ante*; and as to the effect on the rate of appeals against the basis, see note (*o*), *supra*.

(*a*) Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), ss. 3 (2), 9. As to the showing of this value separately in the basis, see p. 71, *ante*; and see *Lancashire Asylums Board* v. *Manchester Corporation*, [1900] 1 Q. B. 458, C. A.

or smaller than is necessary, the council may alter the rate accordingly (*b*).

SUB-SECT. 4.—*Appeal against the Rate.*

Who may appeal.

147. The churchwardens and overseers (*c*) of any parish who have reason to think that the parish is aggrieved by a county rate may appeal against the rate to quarter sessions (*d*).

Nature of appeal.

This appeal may proceed on any just cause of complaint (*e*). The appeal is only against that part of the rate which affects the parish alleged to be over-rated or under-rated or wrongly omitted from the rate (*f*).

Court to which appeal lies.

148. It must be brought to the next practicable sessions after the cause of appeal has arisen (*g*), that is to say, after the rate complained of has been made (*h*). Fourteen clear days' notice must be given before the first day of the quarter sessions (*i*); consequently fourteen clear days, together with a reasonable time for the appellants to make up their mind (*k*), must elapse between the making of the rate and the sessions to which the appeal has to be brought.

Notice of appeal.

The notice of appeal must be in writing, and must be given to the clerk of the peace, and, if the ground of appeal is the under-rating or omission of another parish, to the overseers of that parish, or to the body in whom their powers are vested (*l*).

Powers of quarter sessions.

149. The court upon hearing the appeal can amend the part of the rate appealed against (*m*), but it is doubtful if they can quash the

(*b*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 74 (3). From this provision it would seem as if that Act contemplated a rate for the whole year being made at the beginning of the financial year.

(*c*) As to the body in which the right of appeal may now be vested in a given parish, see note (*j*), p. 73, *ante*.

(*d*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 22. Note that this right of appeal against the rate is entirely distinct from the right of appeal against the basis, described on p. 73, *ante*. The right of appeal given by the County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 22, to an inhabitant of a parish, where there is no churchman or overseer, is now practically obsolete.

(*e*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 22. Certain specific grounds of appeal are, however, mentioned in this provision.

(*f*) *Ibid.*

(*g*) *Ibid.* The word "practicable" does not appear in this provision, but must obviously be read into it.

(*h*) Not after the appellants have reason to think the parish is aggrieved, but after it is in fact aggrieved (*West Riding of Yorkshire County Council* v. *Middleton Parish Council*, [1906] 2 K. B. 157); see also *Glamorgan County Council* v. *Barry Overseers*, [1912] 2 K. B. 603.

(*i*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 22. As to the meaning of "clear days," see title TIME.

(*k*) Compare *Liverpool Gas Co.* v. *Everton* (1871), L. R. 6 C. P. 414; *R.* v. *Surrey Justices* (1880), 6 Q. B. D. 100, 110; and see p. 61, *ante*.

(*l*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 22; and see p. 62, *ante*. If the clerk to the county council is a different person from the clerk of the peace, the former should be served with notice also. The notice should be given to the hundred constable if there is one. As to the form of notice, compare *R.* v. *Blackawton* (*Inhabitants*) (1830), 10 B. & C. 792, decided under the County Rates Act, 1815 (55 Geo. 3, c. 51), s. 14.

(*m*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 22. It is not clear

SECT. 1. County Rate.

whole rate (*n*). If they reduce the rate they must order any amounts over-paid subsequently to the notice of appeal to be refunded by the county (*o*). The court has a discretion to award costs (*p*), including costs against persons who have given notice of an appeal which they have failed to prosecute (*q*).

SUB-SECT. 5.—*Collection and Recovery.*

Consequence of default of guardians.

150. The county rate is collected by means of precepts for contributions addressed to guardians of the poor (*r*). If the guardians fail to pay within the time limited in the precept, the county council may address a warrant to the overseers of the parish for the amount of the rate together with an addition of one shilling in every ten (*s*).

Consequence of default of of overseers.

If the overseers make default in paying the amount so required, any justice may, on the complaint of the clerk of the county council or county treasurer, issue a warrant for the levy of that amount by distress and sale of the offender's goods (*t*).

SECT. 2.—*County Police Rate.*

Purpose of the rate and its collection.

151. The expenses of maintaining a county police force are paid out of a special county account (*u*) which is replenished (*a*) by means of a county police rate made by the county council upon the parishes liable (*b*). The rate is collected by precepts in the same way as the county rate, the amount required being ultimately levied from the ratepayers as part of the poor rate (*c*).

whether a reduction of the value shown in the rate affects the county rate basis automatically; but no doubt the county council would alter its basis in consequence of a successful appeal against the rate.

(*n*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 22, last proviso. The existence of this doubt is due to the transfer of powers from the quarter sessions by virtue of the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (i.); see title LOCAL GOVERNMENT, Vol. XIX., p. 368.

(*o*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 23; and see *Glamorgan County Council* v. *Barry Overseers*, [1912] 2 K. B. 603. The rate is to be paid notwithstanding notice of appeal being given (County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 23). Over-payments made before service of the notice of appeal cannot be ordered to be repaid (*Glamorgan County Council* v. *Barry Overseers, supra*).

(*p*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 24.

(*q*) *Ibid.*, s. 25.

(*r*) See p. 70, *ante*.

(*s*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 27; Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (i.).

(*t*) County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 28. As to the nature of the remedy of distress, see title DISTRESS, Vol. XI., pp. 117—119; and see *ibid.*, pp. 210 *et seq.*

(*u*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 68 (3), (5); and see title LOCAL GOVERNMENT, Vol. XIX., pp. 358, 362.

(*a*) As to county council contributions, see title POLICE, Vol. XXII., p. 483.

(*b*) County Police Act, 1840 (3 & 4 Vict. c. 88), s. 3; Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 3 (i.), 68 (5).

(*c*) County Rates Act, 1844 (7 & 8 Vict. c. 33), ss. 1, 2. The corresponding provisions as to county rate are described on pp. 69 *et seq.*, *ante*.

SECT. 2. County Police Rate.

Separate county police rate.

152. Where there are two chief constables for a county, or where a county has been divided into separate police districts, each having its own police force, a separate county police rate is to be levied for the district of each chief constable (*d*), or for each separate police district, subject in the latter case to the general expenditure being defrayed in common by all the districts (*e*).

Areas not rateable.

153. No county police rate can be levied in any part of a county which contributes to the expenses of the police in any other county, in any part of a county which forms part of the Metropolitan Police District (*f*), or in a municipal borough which maintains its own police force (*g*).

Assessment.

154. The amount required from each parish is ascertained according to a certain rate in the £ on the total value of the parish as shown in the county rate basis (*h*), reduced by one-half of the rateable value, as there shown, of agricultural land in the parish (*i*).

Making and collection.

155. The procedure for the making and collection of the county police rate is practically the same as in the case of the county rate (*j*).

SECT. 3.—*Hundred Rate.*

Repair of bridges.

156. Where certain only of the bridges are repairable by the county at large, and certain others by the hundreds in which they are situate, the expenses of repairing and maintaining the bridges in a hundred are raised by means of a separate rate, called a hundred rate, made on the hundred (*k*) by the county council (*l*). This occurs chiefly, if not solely, in Lancashire.

Repair of main roads.

In any such county, the county council may declare that each hundred shall bear half the expense of repairing and maintaining the main roads situate within it; and the hundred's share of the expense is then raised by a hundred rate (*m*).

(*d*) County Police Act, 1840 (3 & 4 Vict. c. 88), s. 25.

(*e*) *Ibid.*, s. 28.

(*f*) As to the Metropolitan Police District, see title POLICE, Vol. XXII., p. 467.

(*g*) County Police Act, 1840 (3 & 4 Vict. c. 88), s. 3. As to the maintenance of a police force in a municipal borough, see the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), Part IX.; compare *Bootle-cum-Linacre Corporation* v. *Lancashire County Council* (1890), 60 L. J. (Q. B.) 323, C. A.; and see title POLICE, Vol. XXII., pp. 485 *et seq.*

(*h*) County Police Act, 1840 (3 & 4 Vict. c. 88), s. 3; Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (i.); County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 21. As to the county rate basis, see pp. 71 *et seq.*, *ante*.

(*i*) Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), ss. 3 (2), 9; see p. 72, *ante*.

(*j*) County Police Act, 1840 (3 & 4 Vict. c. 88), s. 3; County Rates Act, 1844 (7 & 8 Vict. c. 33), ss. 1—3. As to the procedure for making and collecting county rates, see pp. 74, 76, *ante*.

(*k*) Statutes of Bridges, stats. (1530) 22 Hen. 8, c. 5; (1702) 1 Anne, c. 12. As to these statutes, see title HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., pp. 184, 186, 189, 192.

(*l*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (i.).

(*m*) Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict.

SECT. 4. **Borough Rate.**

SECT. 4.—*Borough Rate.*

SUB-SECT. 1.—*Nature and Purposes.*

Rating authority.

157. A borough rate is made by a borough council (*n*) (including the council of a county borough (*o*)) under powers derived from the Municipal Corporations Act, 1882 (*p*). As a rule, it is made upon each parish liable to pay it, in a lump sum, and the share required from each ratepayer is levied from him, by the overseers, as part of the poor rate (*q*). In such cases the borough rate becomes a charge on, or part of, the poor rate (*r*), but may still be spoken of as "made and levied by" the council (*s*). In certain boroughs, however, the borough council collects the borough rate directly by its own officers (*t*).

Purposes of the rate.

158. The rate is made for the purpose of replenishing the borough fund, out of which the expenses of the general administration of the borough are met (*a*), and may be applied to all purposes to which the borough fund is by law applicable (*b*). It

c. 77), ss. 13, 20; Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 11 (13); *R.* v. *Dolby*, [1892] 2 Q. B. 736; and see title HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., pp. 12, 13, 125.

(*n*) As to borough councils, see title LOCAL GOVERNMENT, Vol. XIX., pp. 302 *et seq.* Many borough councils have local Acts which empower them to levy borough rates and regulate the method of levy; the general law only is discussed in the present title. Where the special Act in force in the town or district incorporates the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), ss. 167, 168, 170—197, or the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 70, rates may be levied under these provisions; but this is not a common case.

(*o*) A county borough council (see title LOCAL GOVERNMENT, Vol. XIX., p. 300) does not make a county rate, nor maintain a county fund (Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 34 (3), 80 (5)); see title LOCAL GOVERNMENT, Vol. XIX., pp. 358, 368, note (*c*), 369, note (*p*).

(*p*) 45 & 46 Vict. c. 50, ss. 144—149.

(*q*) This is the procedure wherever a parish is wholly within a borough and an order is made under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 145; see p. 80, *post*. In a divided parish, the borough rate may be raised by a separate rate (Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 146); but such a case is very rare. As to the duty of the overseers to fix the rate per £ to be demanded from each ratepayer, see p. 80, *post*. As to collection of the poor rate, see pp. 66 *et seq.*, *ante*.

(*r*) *Farmer* v. *London and North Western Rail. Co.* (1888), 20 Q. B. D. 788; and see p. 70, *ante*.

(*s*) *North Eastern Rail. Co.* v. *Sutton Overseers* (1886), 51 J. P. 165.

(*t*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 250 (3).

(*a*) *Ibid.*, s. 144 (1). In many boroughs the expenses incurred for sanitary purposes are met by means of a general district rate; see p. 82, *post*. Certain classes of property, such as railways, enjoy a three-fourths exemption from general district rate (see p. 85, *post*), but do not enjoy any corresponding exemption in respect of the borough rate. It is often, therefore, a matter of moment whether expenses are properly charged to the borough rate rather than to the general district rate; the answer frequently depends on the provisions of local Acts. Certain rates for special purposes may also be levied by virtue of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 123; see title LOCAL GOVERNMENT, Vol. XIX., p. 321.

(*b*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 149; and see, further, title LOCAL GOVERNMENT, Vol. XIX., p. 321.

may be made retrospectively in order to pay charges and expenses incurred or which have come in course of payment within six months before it is made (*c*).

SUB-SECT. 2.—*Basis of Assessment.*

Assessment on parishes.

159. The borough rate is assessed on the parishes, or parts of parishes, liable to it in proportion to the total rateable value of the hereditaments in the parish, or part of a parish, which are rateable to the poor rate, or in respect of which a contribution is made to the poor rate (*d*).

Total rateable value.

160. The total rateable value must be taken from the valuation list in force (*e*), or, if there is none, from the last poor rate (*f*), unless the borough council causes an independent valuation to be made, as it may do if it does not consider the list or rate to be a fair criterion (*g*). Where the parish contains agricultural land, the total rateable value for the purpose of apportioning the borough rate must be reduced by an amount equal to one-half the rateable value of the agricultural land (*h*).

An order which is in force for the rating of owners instead of occupiers under the statutory provision before referred to (*i*) applies to the borough rate (*j*).

SUB-SECT 3.—*Making of the Rate.*

When made.

161. The borough council may order a borough rate to be made from time to time, according as the state of the borough fund requires it (*k*).

Powers of borough council.

162. For the purpose of assessing the rate, the borough council may call for any books of assessment in the hands of the overseers, and for copies of the totals of the assessments to imperial taxes (*l*). Where the borough rate is to be levied by means of an order to the

(*c*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 144 (3). A similar provision with regard to the general district rate appears in the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 210; see p. 83, *post;* and see, especially, *Smith* v. *Southampton Corporation*, [1902] 2 K. B. 244; *A.-G.* v. *De Winton*, [1906] 2 Ch. 106.

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 144 (4). The last clause brings into the total the value of properties to which the exemption of the Crown applies (see p. 14, *ante*), but in respect of which the Crown makes a contribution to the rates; see p. 48, *ante*. But property to which any other exemption from poor rate applies is not included.

(*e*) As to the valuation list, see pp. 47 *et seq.*, *ante*.

(*f*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 144 (5).

(*g*) *Ibid.*, s. 144 (6). Certain provisions enabling such a valuation to be carried out are contained in *ibid.*, s. 144 (7), (8).

(*h*) Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), s. 3 (2); see p. 23, *ante*.

(*i*) *I.e.*, under the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 4; see p. 20, *ante*.

(*j*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 147. Where (*i.e.*, in the majority of cases) the sum required by a borough rate levied under this Act is in fact levied as part of the poor rate, the provisions of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 3, and those of *ibid.*, s. 1, appear to apply equally with those of *ibid.*, s. 4, which are specifically applied by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 147; and see pp. 19, 20, *ante*.

(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 144 (1), (2).

(*l*) *Ibid.*, s. 144 (7). The penalty for failure to produce such books of

SECT. 4. Borough Rate.

overseers (*m*), the borough council has power only to order a rate for a particular total amount, and to assess the contributions required from each parish, leaving it to the overseers to fix the rate in the £ to be demanded from the individual ratepayer (*n*).

SUB-SECT. 4.—*Appeal against the Rate.*

Grounds of appeal.

163. If overseers think that their parish is aggrieved by a borough rate by reason of unequal assessment, the omission of another parish, or any just cause (*o*), they may appeal against such part of the rate as affects their parish to the recorder of the borough (*p*), or to the county quarter sessions (*q*) if the borough has no recorder (*r*). The appeal goes to the next practicable quarter sessions (*s*).

Court.

Notice of appeal.

Fourteen clear days' notice of appeal must be given to the borough council through the town clerk; and the notice must specify the grounds of appeal and be signed by the appellants or their attorney (*t*).

Powers of quarter sessions.

164. The court has no power to quash the whole rate, but it may correct inequalities or omissions (*u*); and may order costs to be paid by such parishes or persons and in such proportions as it thinks fit (*v*). The borough council cannot, by failing to defend an appeal, avoid an adverse decision (*w*).

SUB-SECT. 5.—*Collection and Recovery.*

Liability of, and remedy against, overseers.

165. Where the borough rate is levied by means of an order to the overseers (*x*), they are liable to pay the contribution required from

assessment, or to permit copies thereof, or extracts therefrom, to be taken, is a fine not exceeding £10, recoverable summarily (Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 144 (12)). The penalty for failure on the part of the clerk to the Commissioners to make the required copies is a fine not exceeding £20, recoverable summarily (*ibid.*, s. 144 (13)). As to procedure for recovery of the fines, see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.* As to the Commissioners, see note (*m*), p. 71, *ante*.

(*m*) Under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 145; see p. 78, *ante*.

(*n*) *Durham Corporation* v. *Fowler* (1889), 22 Q. B. D. 394. The council's order may, however, mention also the poundage rate; the addition, though superfluous, is innocuous (*ibid.*).

(*o*) It is submitted that retrospectiveness beyond six months is a good ground of appeal; compare *Smith* v. *Southampton Corporation*, [1902] 2 K. B. 244; but see *R.* v. *Bath* (*Recorder*) (1839), 1 Per. & Dav. 622.

(*p*) See title MAGISTRATES, Vol. XIX., p. 622.

(*q*) See *ibid.*, p. 618.

(*r*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 144 (9).

(*s*) *Ibid.*; compare *R.* v. *Sussex Justices* (1812), 15 East, 206; p. 61, *ante*. The next practicable sessions will usually be the next sessions after the making of the rate, provided there is a reasonable time in which to give the notice of appeal; compare *West Riding of Yorkshire County Council* v. *Middleton Parish Council*, [1906] 2 K. B. 157; p. 75, *ante*.

(*t*) Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), s. 1; compare *R.* v. *Carmarthen* (*Recorder*) (1838), 7 Ad. & El. 756; and see title MAGISTRATES, Vol. XIX., pp. 643, 650.

(*u*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 144 (10).

(*v*) *Ibid.*, s. 144 (11).

(*w*) Compare *R.* v. *Stamford* (*Recorder*) (1838), 2 Jur. 965.

(*x*) See p. 78, *ante*.

the parish, which they levy as part of the poor rate (*a*). If they make default, the amount may be levied by distress on their goods under a warrant signed by the mayor and sealed with the corporate seal, or signed by two of the borough justices (*b*). An overseer to whom the order is directed remains liable to distress although he has gone out of office before the distress is levied (*c*).

SECT. 5.—*Watch Rate.*

Boroughs in which rate may be levied.

166. A watch rate may be levied by the council of any borough in which such rate might be levied at the 31st December, 1882 (*d*), within such parts of the borough as are watched day and night and as are declared by the council liable to watch rate (*e*). The money raised is paid into the borough fund (*f*).

Assessment.

167. The watch rate is levied upon the occupiers of all hereditaments in the parts affected (*g*); but it is levied from owners instead of occupiers in the same circumstances as those in which the poor rate is so levied (*h*). Exemptions established by local Acts are perpetuated (*i*).

The rate is made upon an estimate of the annual value of the hereditament assessed (*k*). The total amount of the rate in the

(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 145 (1), (2). As to collection in the rare case of a divided parish, see *ibid.*, s. 146. Apparently the overseers may raise in respect of the borough rate a sufficient sum to pay the required contribution, although a portion of the rate made by the overseers is irrecoverable by reason of inability to pay compounding agreements, empty houses etc.; compare *R.* v. *New Windsor* (*Mayor*) (1845), 7 Q. B. 908; *Cobb* v. *Allan* (1847), 10 Q. B. 683.

(*b*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 145 (3). Mandamus will not lie to enforce payment of the contribution (*R.* v. *Hunslet Overseers* (1859), 1 E. & E. 775). As to the nature of the remedy of distress, see title DISTRESS, Vol. XI., pp. 117—119; and see *ibid.*, pp. 210 *et seq.*

(*c*) Compare *Jones* v. *Johnson* (1852), 7 Exch. 452, Ex. Ch.; and, as to the defences open upon distress proceedings, see *ibid.*

(*d*) The date of the commencement of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

(*e*) *Ibid.*, s. 197 (1); and see titles LOCAL GOVERNMENT, Vol. XIX., pp. 320, note (*n*), 321; POLICE, Vol. XXII., pp. 487, 488. The circumstances in which a watch rate may be levied are, however, somewhat restricted by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 197 (6), (7). Provisions as to a watch rate in a divided parish are contained in *ibid.*, s. 198.

(*f*) *Ibid.*, s. 200; and, as to the borough fund, see title LOCAL GOVERNMENT, Vol. XIX., pp. 319, 320.

(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 197 (1). The "occupier" for this purpose is the same as for the purpose of the poor rate; see pp. 4 *et seq.*, *ante*.

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 197 (5); see pp. 19, 20, *ante*; and see note (*j*), p. 79, *ante*.

(*i*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 197 (8), (9).

(*k*) *Ibid.*, s. 197 (2), where annual value is specially defined in somewhat different terms from rateable value for poor rate purposes. As to the definition of the latter, see pp. 25 *et seq.*, *ante*.

SECT. 5. Watch Rate.

year must not exceed 8*d.* in the £ on the net annual value of each hereditament rated (*l*).

The rate may be made yearly, half-yearly, or otherwise (*m*); and the council has the same powers for making it as it has with regard to the borough rate (*n*).

Collection and recovery.

168. The council and the overseers have the same powers with regard to collection as they have in respect of a borough rate; the watch rate is therefore usually collected as in the case of a borough rate by means of an order to the overseers, who raise the money required as part of the poor rate (*o*), but it may also be collected by the borough council through its own officers (*p*). Any warrant required for the collection of the watch rate may be signed by the mayor and sealed with the corporate seal (*q*).

SECT. 6.—*General District Rate.*

SUB-SECT. 1.—*Nature and Purposes.*

Purpose of the rate.

169. The general district rate is a rate levied by an urban authority, that is, the council of a borough or urban district (*r*), for the purpose of defraying expenses incurred in the execution of the Public Health Acts (*s*), or expenses directed to be defrayed in the same manner.

Rating authority and districts.

Such a rate may be made by the authority at any time when its district fund requires to be replenished (*t*). In ordinary cases one uniform rate is levied throughout the borough or district; but the

(*l*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 197 (3). The rate cannot be levied at a higher rate in the £ in order to compensate for a number of hereditaments being unproductive; compare *Re Liverpool Library Act, Ex parte Brown* (1862), 26 J. P. 389.

(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 197 (3).

(*n*) *Ibid.*, s. 197 (4). It is submitted, however, that the borough council must specify the rate in the £ at which the watch rate is to be levied (see *ibid.*, s. 197 (1), (3)), and that, to this extent *Durham Corporation* v. *Fowler* (1889), 22 Q. B. D. 394 (cited in note (*n*), p. 80, *ante*), does not apply.

(*o*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 197 (4), read with *ibid.*, s. 145. As to collection of the borough rate, see p. 80, *ante*. As to collection of the poor rate, see p. 66, *ante*.

(*p*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 250 (3).

(*q*) *Ibid.*, s. 199.

(*r*) See titles LOCAL GOVERNMENT, Vol. XIX., pp. 262, 293; PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., p. 372.

(*s*) For a list of the Public Health Acts, see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., p. 361, note (*a*). The Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 207, provides that certain authorities may levy these expenses by means of general district rates, and that certain other authorities are to levy them by means of other rates; and the application of these provisions may be modified in certain circumstances by the Local Government Board under *ibid.*, s. 208. For a detailed account of these provisions, see titles LOCAL GOVERNMENT, Vol. XIX., pp. 280 *et seq.*; PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 380 *et seq.*

(*t*) Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 209, 210. As to a general district rate and the finances of an urban authority, see, further, title LOCAL GOVERNMENT, Vol. XIX., pp. 280 *et seq.*

authority may divide its district into parts and make a separate general district rate on any part (*u*).

Prospective and retrospective effect.

170. Besides being made prospectively the rate may be made retrospectively to raise money for the payment of charges and expenses incurred at any time within six months before the making of the rate (*v*). It is, however, legitimate to make a general district rate for the purpose of meeting expenses incurred more than six months before the making of the rate, where the amount of such expenses was not definitely ascertained until judgment had been obtained in an action, provided there has been no undue delay in bringing the action (*w*). On the other hand, an urban authority cannot, by borrowing from its bankers or from anyone else within six months before the making of the rate, give itself jurisdiction to make a rate for the payment of debts incurred a substantial time before the six months period began (*x*).

Effect of limitation in local Act.

171. Any limit imposed by a local Act upon the amount of a rate to be made by an urban authority does not apply to a general district rate (*a*).

SUB-SECT. 2.—*Persons Rateable.*

Persons rateable and rateable occupation.

172. A general district rate is made directly upon the person liable to pay it. Except where the provisions as to the rating of

(*u*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (4). Any expenses incurred in common for two or more parts must in such a case be equitably apportioned. As to dividing the district, see, further, title LOCAL GOVERNMENT, Vol. XIX., p. 281, note (*l*); and compare *R.* v. *London and Brighton Rail. Co.* (1879), 4 Q. B. D. 389.

(*v*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 210. In calculating this period of six months the time during which any appeal or other proceeding relating to the rate is pending is excluded (*ibid.*). It is not clear what this means; see, generally, title LOCAL GOVERNMENT, Vol. XIX., p. 281.

(*w*) *Wolstanton United Urban Council* v. *Tunstall Urban Council*, [1910] 2 Ch. 347, where a mandamus issued ordering the rate to be made (but see S. C., [1911] 1 Ch. 229, C. A.), and the decisions on similar points in reference to special expenses rates were followed, namely, *R.* v. *Leigh Rural Council*, [1898] 1 Q. B. 836, C. A., and *Croydon Corporation* v. *Croydon Rural Council*, [1908] 2 Ch. 321, C. A., cited in note (*p*), p. 95, *post*. The Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 89, contained a similar provision, and in the following cases where the circumstances were more or less comparable to those in *Wolstanton United Urban Council* v. *Tunstall Urban Council, supra*, rules for mandamus ordering the making of the rate were granted:—*R.* v. *Rotherham Local Board* (1858), 8 E. & B. 906; *Swire* v. *Burley Local Board of Health* (1859), 23 J. P. 420; *Ward* v. *Lowndes* (1859), 1 E. & E. 940, 956; *Worthington* v. *Hulton* (1865), L. R. 1 Q. B. 63. For a case where a mandamus was refused on the ground of undue delay, see *Burland* v. *Kingston-upon-Hull Local Board of Health* (1862), 3 B. & S. 271.

(*x*) This is the effect of the decision in *Smith* v. *Southampton Corporation*, [1902] 2 K. B. 244; *A.-G.* v. *De Winton*, [1906] 2 Ch. 106; and see *A.-G.* v. *Tottenham Urban District Council* (1909), 73 J. P. 437.

(*a*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 227; compare *Walsall Overseers* v. *London and North Western Rail. Co.* (1879), 4 App. Cas. 467, *per* Lord HATHERLEY, at p. 476; *Hill* v. *Crediton Urban District Council* (1898), 80 L. T. 861, C. A.; and see title LOCAL GOVERNMENT, Vol. XIX., p. 281, note (*k*).

SECT. 6. General District Rate.

owners apply (*b*), the rate is made upon the occupier of all kinds of property for the time being by law assessable to any rate for the relief of the poor (*c*). Consequently, the principles which determine rateable occupation for the purposes of poor rate also apply to the question who is the rateable occupier for the purposes of the general district rate (*d*); and the total exemptions which apply to the poor rate also apply to the general district rate (*e*).

Exempted property under local Act.

Where any kind of property is exempt by any local Act from rating in respect of any of the purposes for which general district rates can be made, the exemption applies also to the general district rate, but not so as in any way to enlarge the scope of the exemption (*f*).

Exemptions from separate highway rate.

Exemptions formerly applying to particular properties in respect of a separate highway rate appear to apply in respect of that part of a general district rate which is raised for the purpose of repairing highways (*g*).

Rating of owner instead of occupier.

173. At the option of the urban authority the owner (*h*) may be rated instead of the occupier in certain cases, the owner himself having no option in the matter. Such cases are:—(1) where the rateable value of the premises does not exceed £10; (2) where the premises are let to weekly or monthly tenants; (3) where the premises are let in separate apartments; (4) where the rents become payable or are collected at any shorter period than quarterly. The urban authority may at its option, in any of these cases, rate the owner whether the premises are occupied or not (*i*). An owner who is rated under these provisions is rated upon a reduced amount (*j*); but they do not apply where the owner is himself the occupier (*k*).

Contractual obligation.

The provisions of the Public Health Act, 1875 (*l*), do not affect any lease, contract, or agreement between landlord and tenant (*m*). Consequently, notwithstanding those provisions, any covenant between landlord and tenant providing that either party

(*b*) See the text, *infra*.
(*c*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1).
(*d*) See pp. 4 *et seq.*, *ante*.
(*e*) See pp. 21, 22, *ante*. There are also certain partial exemptions which apply to the general district rate and not to the poor rate; for these, see pp. 85, 86, *post*.
(*f*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1) (c). The Local Government Board by provisional order may direct that the exemption shall not apply to the general district rate.
(*g*) See *Ferrand* v. *Bingley Urban Council*, [1903] 2 K. B. 445; title HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., pp. 90, 91.
(*h*) The word "owner" in the Public Health Act, 1875 (38 & 39 Vict. c. 55), means (*ibid.*, s. 4) the person who receives the rack-rent or would receive the same if the premises were let at a rack-rent, and includes agents and trustees; see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., p. 427, note (*o*). Agents or trustees may therefore be rated under the provisions referred to in the text, *supra*.
(*i*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1) (a); *R.* v. *Barclay* (1882), 8 Q. B. D. 486, C. A.
(*j*) See p. 87, *post*.
(*k*) *R.* v. *Propert*, [1911] 1 K. B. 83; and see p. 87, *post*.
(*l*) 38 & 39 Vict. c. 55.
(*m*) *Ibid.*, s. 226.

shall bear the general district rate is binding as between the parties (*n*).

SUB-SECT. 3.—*Basis of Assessment.*

(i.) *In General.*

Meaning of "full net annual value."

174. The general district rate is assessed on the full net annual value ascertained by the valuation list for the time being in force, or, if there is no such list (*o*), by the last poor rate (*p*). The "full net annual value" has the same meaning as "rateable value" in the statutes applying to the poor rate (*q*).

If the assessment appearing in the valuation list in force at the time of the making of the general district rate is subsequently reduced as the result of an objection or of an appeal against the poor rate, the reduction applies to the general district rate also (*r*).

By reason of the existence of certain partial exemptions (*s*), the provisions of the Agricultural Rates Act, 1896 (*t*), do not apply to a general district rate (*a*).

(ii.) *Partial Exemptions.*

Classes of property assessed at one-fourth of net annual value.

175. In respect to property of certain special classes, the general district rate is made, not upon the whole, but upon one-fourth part only of the net annual value (*b*). Such classes of property are:— (1) tithes and tithe commutation rentcharge (*c*); (2) land used as arable, meadow, or pasture ground only (*d*); (3) land used as woodlands (*e*); (4) land used as market gardens or nursery grounds (*f*);

(*n*) As to covenants to pay rates, see title LANDLORD AND TENANT, Vol. XVIII., pp. 489 *et seq.*

(*o*) As in parishes to which the Union Assessment Committee Acts (see note (*n*), p. 45, *ante*) do not extend; see pp. 45, 46, *ante.*

(*p*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1). As to valuation lists and the values shown in them, see pp. 47 *et seq.*, *ante.*

(*q*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 4. For the meaning of "rateable value" for poor rate purposes, see pp. 25 *et seq.*, *ante.*

(*r*) *Sheffield Waterworks Co.* v. *Sheffield Corporation* (1885), 50 J. P. 6; and compare *Keeton* v. *Sheffield Coal Co.*, [1901] 2 K. B. 26. Powers to amend the general district rate are contained in the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 221. The making of a new or supplemental valuation list does not appear to affect a general district rate made before the approval of that list.

(*s*) See the text, *infra.*

(*t*) 59 & 60 Vict. c. 16.

(*a*) *Ibid.*, s. 1 (2) (a); see p. 23, *ante.*

(*b*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1) (b).

(*c*) As to rates assessed on tithe, see title ECCLESIASTICAL LAW, Vol. XI., pp. 749, 750; pp. 3, 4, 17, 45, *ante.*

(*d*) When any right of sporting over such land is severed from the occupation and is let, and is therefore separately rateable under the Rating Act, 1874 (37 & 38 Vict. c. 54), s. 6 (see pp. 44, 45, *ante*, and see note (*e*), p. 4, *ante*), the present exemption does not apply to that right (*Alton Urban Council* v. *Spicer*, [1904] 1 K. B. 678).

(*e*) As to what are woodlands for rating purposes, see the Rating Act, 1874 (37 & 38 Vict. c. 54), ss. 3 (1), 12; pp. 4, note (*d*), 44, *ante.* The decision in *Alton Urban Council* v. *Spicer*, *supra*, applies to a right of sporting over woodlands.

(*f*) These words apply to land with greenhouses or glasshouses upon it, used by a market gardener for the purpose of growing fruit or vegetables

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(5) land covered with water(*g*); (6) land used only as a canal or towing-path for the same(*h*); (7) land used only as a railway(*i*) constructed under the powers of any Act of Parliament for public conveyance(*k*); (8) land used as orchards(*l*); and (9) land used as allotments(*m*).

for sale in the course of his business (*Purser* v. *Worthing Local Board of Health* (1887), 18 Q. B. D. 818, C. A.); compare *Smith* v. *Richmond*, [1899] A. C. 448, decided under the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16); and see p. 23, *ante*.

(*g*) These words apply to the reservoir of a water company (*Southwark and Vauxhall Water Co.* v. *Hampton Urban Council*, [1899] 1 Q. B. 273, C. A.; affirmed [1900] A. C. 3); but they do not appear to apply to the pipes and mains of a water company (*R.* v. *Birmingham Waterworks Co.* (1861), 1 B. & S. 84, decided upon similar words in a local Act). They apply to the filter beds of a water company, although these are, in the course of business, left dry from time to time, and to a canal used for conveying water to those filter beds, but not to adjoining land; thus, where a hereditament consists only in part of land covered with water the exemption applies to that part only (*East London Waterworks Co.* v. *Leyton Sewer Authority* (1871), L. R. 6 Q. B. 669, decided under the Sewage Utilization Act, 1867 (30 & 31 Vict. c. 113), but held in *Smith's Dock Co., Ltd.* v. *Tynemouth Corporation* [1908] 1 K. B. 948, 955, 956, C. A., to govern the interpretation of the words in the Public Health Act, 1875 (38 & 39 Vict. c. 55). These words also apply to land fronting a river and excavated so that the waters of the river flow over the land, while floating pontoons for the repairing of ships are held in position over it (*Smith's Dock Co., Ltd.* v. *Tynemouth Corporation*, [1908] 1 K. B. 315, 948, C. A.). The same expression appearing in the Local Government Act, 1858 (21 & 22 Vict. c. 98), s. 55, has been held to apply to the basin or reservoir of a wet dock, but not to the warehouses, cranes and other appurtenances (*Newport Dock Co.* v. *Newport Local Board of Health* (1862), 2 B. & S. 708.

(*h*) As to canals and towing-paths, see titles RAILWAYS AND CANALS, Vol. XXIII., pp. 779 *et seq.*; WATERS AND WATERCOURSES.

(*i*) As to railways generally, see title RAILWAYS AND CANALS, Vol. XXIII., pp. 619 *et seq.*

(*k*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1) (b). The word "only" is to be read in here (*Swansea Improvements and Tramway Co.* v. *Swansea Urban Sanitary Authority*, [1892] 1 Q. B. 357; *Wakefield and District Light Railways* v. *Wakefield Corporation*, [1907] 2 K. B. 256, C. A.; affirmed [1908] A. C. 293). The actual construction of the railway, as well as its user for public conveyance, must have been authorised by Act of Parliament (*North Eastern Rail. Co.* v. *Leadgate Local Board* (1870), L. R. 5 Q. B. 157, decided under the Local Government Act, 1858 (21 & 22 Vict. c. 98), s. 55). The words in the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1) (b), apply to a light railway constructed upon the public streets under an order made in pursuance of the Light Railways Act, 1896 (59 & 60 Vict. c. 48) (*Wakefield and District Light Railways* v. *Wakefield Corporation, supra*), to a railway constructed for public conveyance under the powers of a special Act, although described in the Act as a tramroad (*Blackpool and Fleetwood Tramroad Co.* v. *Thornton Urban Council*, [1907] 1 K. B. 568, C. A.; affirmed [1909] A. C. 264), and to a tramway constructed under the Tramways Act, 1870 (33 & 34 Vict. c. 78) (*Metropolitan Electric Tramways, Ltd.* v. *Tottenham Urban Council*, [1912] 2 K. B. 216, C. A., overruling *Swansea Improvements and Tramway Co.* v. *Swansea Urban Sanitary Authority, supra*); see, generally, title TRAMWAYS AND LIGHT RAILWAYS. In order to be within the exemption it is sufficient that the railway should be open to the public for the conveyance of goods on payment of tolls; it need not be open for passenger traffic (*Newport Dock Co.* v. *Newport Local Board of Health, supra*). It is not clear which of the appurtenances of a railway, *e.g.*, platforms,

(*l*), (*m*) For notes (*l*) and (*m*) see next page.

176. Where it appears to an urban authority that any premises were sufficiently drained before the construction of a new sewer laid down by it, it may make such a reduction in the rate charged in respect of those premises, and for such time, as it deems just (*n*).

Relief against expenses of sewerage.

(iii.) *Reduction where Owners are Rated.*

Where owner rated.

177. In cases where the owner is rated instead of the occupier (*o*) he is assessed upon a sum not less than two-thirds and not more than four-fifths of the net annual value appearing in the valuation list (*p*), or the poor rate where there is no such list (*a*); the precise sum is, between those limits, at the discretion of the urban authority.

Assessment of tenements occupied or unoccupied.

Where the owner is assessed in respect of tenements whether occupied or unoccupied, the urban authority must assess him upon one-half only of the net annual value (*b*).

SUB-SECT. 4.—*Making of the Rate.*

Estimate of the rate.

178. Before proceeding to make the rate, the urban authority must cause an estimate to be prepared showing the sums required for each of the purposes for which the rate is to be made, the rateable value (*c*) of the property assessable, and the necessary amount

station buildings, sidings etc. are included within the exemption; see *South Wales Rail. Co.* v. *Swansea Local Board of Health* (1854), 4 E. & B. 189; *Midland Rail. Co.* v. *Birmingham Corporation* (1865), 30 J. P. 197; *North Eastern Rail. Co.* v. *Scarborough Local Board* (1869), 33 J. P. 244; *London and North Western Rail. Co.* v. *Llandudno Improvement Commissioners*, [1897] 1 Q. B. 287; *Lancashire and Yorkshire Rail. Co.* v. *Liverpool Corporation* (1912), 107 L. T. 264. None of these cases were decided under the Public Health Act, 1875 (38 & 39 Vict. c. 55); but upon provisions closely analogous. In *Lancashire and Yorkshire Rail. Co.* v. *Liverpool Corporation, supra* (which dealt with goods stations), it was held that the decision in *London and North Western Rail. Co.* v. *Llandudno Improvement Commissioners, supra,* carried the exemption beyond the true principle laid down in the earlier cases; and that the exemption must be limited to land used as a railway, as distinguished from land used for works and conveniences, or for the purposes of a railway company, which include the business of a carrier. As to goods-yards and wharves in special circumstances, compare *Williams* v. *London and North Western Railway*, [1900] 1 Q. B. 760, C. A.; *R.* v. *Taff Vale Rail. Co.* (1857), 22 J. P. 21. As to the rateable value of railways for the purposes of poor rate, see pp. 30 *et seq.*, *ante*.

(*l*) Public Health (Rating of Orchards) Act, 1890 (53 & 54 Vict. c. 17).

(*m*) Allotments Rating Exemption Act, 1891 (54 & 55 Vict. c. 33). The term "allotment" means any parcel of land of not more than two acres in extent and let as an allotment and cultivated as a garden or a farm, or partly as a garden and partly as a farm; and see title ALLOTMENTS, Vol. I., p. 357.

(*n*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 224.

(*o*) See p. 84, *ante*.

(*p*) See pp. 47 *et seq.*, *ante*.

(*a*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1) (a), proviso. Where the owner is also the occupier, *ibid.*, s. 211 (1) (a), does not apply, and the owner is rated on the full net annual value (*R.* v. *Propert*, [1911] 1 K. B. 83); and see p. 84, *ante*.

(*b*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1) (a), proviso; *R.* v. *Barclay* (1882), 8 Q. B. D. 486, C. A.

(*c*) As to rateable value, see pp. 25 *et seq.*, *ante*.

SECT. 6. General District Rate.

of the rate in the £. After approval by the urban authority, the estimate is entered in the rate-book, and is open to public inspection. It is not part of the rate, and does not affect its validity (*d*); but, if the rate is challenged upon appeal as having been made for an improper purpose, the estimate may be looked at in order to make out a *primâ facie* case against the rate (*e*). The estimate may be inspected in the same way as the rate (*f*).

Notice of intention to make the rate.

Further, the urban authority must give public notice of its intention to make the rate and of the time when it intends to do so, and of the place where a statement of the rate may be inspected (*g*). This notice must be given in the week preceding the making of the rate and at least seven days previously thereto, but the notice need not be proved in any proceedings for recovery of the rate (*g*).

Inspection of valuation list or poor rate.

For the purpose of assessing general district rates, any person appointed by the urban authority may inspect and take copies or extracts from any valuation list or poor rate within the district (*h*).

Making and publication.

179. The rate is made in writing under the common seal of the urban authority (*i*); and it may commence at such times as the urban authority thinks fit (*k*). No allowance by justices is necessary.

The form of the rate is appointed by the urban authority from time to time (*k*). If the authority does not know the name of the person who is liable to be rated, he may be described as "owner" or "occupier" of the premises assessed (*l*).

The rate must be published in the same manner as a poor rate (*m*), but, unlike the poor rate, does not appear to be rendered invalid by want of publication (*n*). Any person interested in, or assessed to the rate, may inspect it, and take copies or extracts free of charge (*o*).

The production of the rate-book is *primâ facie* evidence of the making and validity of the rate (*p*).

Amendment of the rate.

180. The urban authority may amend the rate when necessary, either by inserting the name of any person who is entitled to have

(*d*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 218.

(*e*) *Smith* v. *Southampton Corporation*, [1902] 2 K. B. 244; and see p. 83, *ante*.

(*f*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 219; and see the text, *supra*.

(*g*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 210. The dates of the publication and of the making of the rate are excluded in computing the seven days (*R.* v. *Shropshire Justices* (1838), 8 Ad. & El. 173; *Young* v. *Higgon* (1840), 6 M. & W. 49; *Robinson* v. *Robinson* (1861), 30 L. J. (P. M. & A.) 189).

(*h*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 212.

(*i*) *Ibid.*, s. 210.

(*k*) *Ibid.*, s. 222.

(*l*) *Ibid.*, s. 220.

(*m*) *Ibid.*, s. 222; compare *R.* v. *Wolferstan*, [1893] 2 Q. B. 451. The manner of publishing a poor rate is described at p. 56, *ante*.

(*n*) Compare *Le Feuvre* v. *Miller* (1857), 8 E. & B. 321.

(*o*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 219. The penalty for refusing to permit inspection, or to allow copies or extracts to be taken, is a fine not exceeding £5 (*ibid.*). As to the recovery of penalties, see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 367 *et seq.*

(*p*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 223.

his name inserted and who makes a claim, or by inserting the name of any person who ought to have been assessed, or by omitting the name of any person who ought not to have been assessed, or by raising or reducing the assessment of any person who has been under-rated or over-rated (*a*). The power of raising or reducing the assessment may, it would appear, be exercised in the following cases:—where the rate does not correctly follow the poor rate valuation, or where the poor rate valuation has been altered on objection or appeal since the rate was made, and so as to affect the rate (*b*); or where effect has not been given in the rate as originally made to the three-fourths exemption allowed by the statute (*c*).

SUB-SECT. 5.—*Remedies of Ratepayers.*

Objection against valuation list.

181. As the general district rate follows the poor rate valuation of the premises and is assessed upon the same premises as the poor rate (*d*), a person, assessed to a general district rate, whose grievance is either that the valuation of his premises is too high, or that he ought not to have been assessed at all, must make an objection against the valuation list for poor rate, and, if he does not get sufficient relief by that means, he must appeal against the poor rate itself (*e*).

Appeal against the rate.

Any ground of appeal against the general district rate which does not also affect the poor rate valuation may be raised upon appeal against the general district rate, as, for instance, that the three-fourths exemption (*c*) has not been allowed (*f*), or that the rate is bad because made retrospectively for more than six months (*g*).

Court to which appeal lies.

182. A person who deems himself so aggrieved may appeal against the rate to the next court of quarter sessions holden not less than twenty-one days after the demand of the rate (*h*).

(*a*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 221.

(*b*) *Ibid.*, s. 211 (1), makes it necessary for the general district rate to follow the poor rate valuation (see pp. 46 *et seq.*, *ante*), except in cases of partial exemption. *Sheffield Waterworks Co.* v. *Sheffield Corporation* (1885), 50 J. P. 6, decides that the general district rate must be altered when the poor rate valuation is altered on objection (see the text, *infra*), and this appears also to be the effect of an alteration of the poor rate on appeal; compare *Keeton* v. *Sheffield Coal Co.*, [1901] 2 K. B. 26; and see p. 64, *ante*. As to rights of appeal against the amendment, see p. 90, *post*; and as to the collection of an amended rate, see p. 92, *post*.

(*c*) Granted by the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1) (b); see pp. 85, 86, *ante*.

(*d*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1); and see p. 84, *ante*. As to rateable occupation for the purposes of the poor rate, see pp. 4 *et seq.*, *ante*.

(*e*) If the person aggrieved thus obtains a reduction or omission of his assessment, he will get the same relief in respect of the general district rate affected (*Sheffield Waterworks Co.* v. *Sheffield Corporation*, *supra*; *Keeton* v. *Sheffield Coal Co.*, *supra*; see p. 85, *ante*); and see note (*b*), *supra*.

(*f*) See, *e.g.*, *Smith's Dock Co., Ltd.* v. *Tynemouth Corporation*, [1908] 1 K. B. 315, 948, C. A.; and see pp. 85, 86, *ante*.

(*g*) See, *e.g.*, *Smith* v. *Southampton Corporation*, [1902] 2 K. B. 244; and see p. 83, *ante*. Such a ground of objection can apparently be taken only on appeal; compare *R.* v. *Streetfield* (1863), 27 J. P. 391.

(*h*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 269 (1); and see

SECT. 6. General District Rate.

Notice of appeal.

He must give notice of appeal to the urban authority within fourteen days after the demand of the rate (*i*). The urban authority is entitled to fourteen clear days' notice (*k*); consequently, in order to give notice in time to the proper court of quarter sessions, the appellant will often find that he must give his notice much less than fourteen days after the demand. If the rate is made in respect of property situate in a quarter sessions borough, the appeal goes to the recorder; if not, to the quarter sessions for the county, division, or riding (*l*).

Form and service of notice.

The notice must state the ground of appeal (*i*), and should specify the premises concerned in exactly the same way as they are numbered and described in the general district rate. The notice may be given by serving the clerk to the urban authority; and it may be served by post, in which case it is deemed to have been served at the time when it would be delivered in the ordinary course of post (*m*). Proof of the letter being properly addressed, prepaid (*n*), and put into the post is sufficient proof of service (*m*).

Recognisances.

Immediately after giving notice, the appellant must enter into recognisances with two sureties before a justice of the peace, unless the justice allows some other security (*o*).

Powers of the court.

183. The court may amend or quash the rate and award costs in the same way as upon an appeal against the poor rate, and the costs awarded may be recovered in the same way (*p*).

Resisting the making of an order for payment.

184. In addition to any right of appeal, there are a limited number of defences on which the ratepayers can rely when resisting the making of an order for payment when proceedings are taken for recovery of the rate (*q*).

SUB-SECT. 6.—*Collection and Recovery.*

Demand.

185. The urban authority appoints the persons who are to collect the general district rate, and may direct it to be collected with any

title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 369, 370.

(*i*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 269 (2); *R.* v. *Barnet Sanitary Authority* (1876), 1 Q. B. D. 558.

(*k*) Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), s. 1. That is, the day of giving the notice and the first day of quarter sessions are both excluded in computing the fourteen days (*Liffin* v. *Pitcher* (1841), 1 Dowl. (N. S.) 767).

(*l*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 269 (1). As to county and borough quarter sessions, see title MAGISTRATES, Vol. XIX., pp. 618 *et seq.*

(*m*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 267; and see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., p. 371.

(*n*) *Walthamstow Urban District Council* v. *Henwood*, [1897] 1 Ch. 41.

(*o*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 269 (3).

(*p*) *Ibid.*, s. 269 (5). As to the powers of quarter sessions on an appeal against a poor rate, see pp. 64, 65, *ante*. The proviso to the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 269 (5), gives the court power to order the levy of moneys charged by the rate, even though the rate itself be quashed. On an appeal against a general district rate, the court has, of course, no power to alter the valuation of the premises assessed, because this valuation necessarily follows the poor rate valuation.

(*q*) See p. 92, *post*.

other rate or tax (*r*). A demand for the actual sum due, so far as ascertainable when the demand is made, must be made in writing (*s*). It may be served by delivery to, or at the residence of, the person assessed, or may be sent by post by a prepaid letter, in which case proof of the posting and prepayment (*t*) of a properly addressed letter is sufficient proof of service (*u*). If the person assessed is described in the rate merely as the "owner" or "occupier" of the premises, he may be so described in the demand note, which may be served by delivery to some person on the premises, or, if there is no such person, by being affixed thereon (*v*).

No time is limited for the demand.

Summons.

186. If any person assessed fails to pay the rate when due and for the space of fourteen days after it has been demanded of him as above mentioned (*a*), any justice may summon the defaulter to appear before a court of summary jurisdiction (*b*) and show cause why the rate should not be paid (*c*). A similar summons may issue at any time after the demand on a person who quits or is about to quit any premises without payment of the rate due from him in respect thereof and who refuses to pay (*c*). The summons in either case must be issued within six months of the demand, but if the amount due has been reduced in consequence of an appeal against the poor rate, and a reduced demand is made for that reason (or, it is submitted, for any other legitimate reason), the six months run from the date of the reduced demand (*d*). The summons may be for arrears of poor rate as well as of general district rate (*e*), and the complaint and summons may be in respect of several sums (*f*).

Order for payment.

187. If, upon proof of service, the defaulter fails to appear, or if no sufficient cause for non-payment is shown, the court may make an order for payment of the arrears (*g*).

(*r*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 222.

(*s*) *Ibid.*, s. 256; *Keeton* v. *Sheffield Coal Co.*, [1901] 2 K. B. 26; compare *Mansel* v. *Itchen Overseers*, [1906] 1 K. B. 221; see p. 66, *ante*; and see p. 92, *post*.

(*t*) *Walthamstow Urban District Council* v. *Henwood*, [1897] 1 Ch. 41.

(*u*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 267.

(*v*) *Ibid.*, ss. 220, 267.

(*a*) See p. 90, *ante*.

(*b*) As to procedure before courts of summary jurisdiction, see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.*

(*c*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 256; and see title DISTRESS, Vol. XI., p. 216.

(*d*) Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11; *Keeton* v. *Sheffield Coal Co.*, *supra*.

(*e*) *R.* v. *Glover, Ex parte Hornsey District Council* (1900), 35 L. J. 269.

(*f*) Public Health Acts Amendment Act, 1907 (7 Edw. 7, c. 53), s. 8. See also the Poor Rates Recovery Act, 1862 (25 & 26 Vict. c. 82).

(*g*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 256; and see title DISTRESS, Vol. XI., p. 216. The publication of notice of intention to make the rate need not be proved (Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 210; see p. 88, *ante*); and neither the making of an estimate under the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 218 (see p. 87, *ante*), nor the publication of the rate under the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 222 (see p. 88, *ante*), are essential to the making of an order for payment; see *Le Feuvre* v. *Miller* (1857), 8 E. & B. 321.

SECT. 6. General District Rate.

Meaning of "sufficient cause for non-payment."

188. It is not possible to give any exhaustive definition of a "sufficient cause for non-payment," for, though the person summoned may probably take any objection that would be open to him upon proceedings for distress for poor rate, so far as those objections apply at all to the general district rate, it may be that the words quoted allow him to raise other objections also in answer to a summons for arrears of general district rate (*h*). At the same time it does not appear that every ground that would be open to him in an appeal against a general district rate is open to him in proceedings for recovery of that rate. Thus, he cannot in such proceedings take the ground that the rate is retrospective beyond six months (*i*), or is made for improper objects (*j*), or that there is a concurrent rate, previously made, in existence relating to the same property (*k*), or that (if the premises in respect of which the rate is made are within the district of the rating authority) an exemption created by a local Act attaches to those premises (*l*), or that he is not in occupation of all the property rated if the description in the rate is satisfied by property which he does occupy (*m*). On the other hand, where the exemption is created by a public Act of which the whole world has notice, that exemption is a sufficient cause for non-payment, and may be taken as a ground of objection in these proceedings (*n*).

Other matters within the jurisdiction of the court.

189. Other matters within the jurisdiction of the court hearing such a summons are :—the question whether the premises in respect of which the rate is demanded are included within the area of the

(*h*) It was formerly thought that the jurisdiction of the justices was the same in proceedings for recovery of general district rate as in those for recovery of poor rate (*R.* v. *Hannam* (1886), 34 W. R. 355, C. A.). As to the extent of their jurisdiction in proceedings of the latter kind, see title DISTRESS, Vol. XI., pp. 210 *et seq.* But more recently it has been held that the words quoted in the text, *supra* (which do not occur in the poor rate statutes), have the effect of making the jurisdiction somewhat wider in the case of general district rate (*Dixon* v. *Blackpool and Fleetwood Tramroad Co.*, [1909] 1 K. B. 860, following *Sheffield Waterworks Co.* v. *Sheffield Corporation* (1885), 50 J. P. 6 ; *Blackpool and Fleetwood Tramroad Co.* v. *Bispham with Norbreck Urban Council*, [1910] 1 K. B. 592). It should be noted that, publication not being essential (see p. 88, *ante*), and allowance by justices not being required at all in the case of a general district rate (see p. 88, *ante*), neither of these matters can be raised in proceedings for recovery of such a rate.

(*i*) *R.* v. *Streetfield* (1863), 27 J. P. 391 ; see p. 83, *ante*.

(*j*) *Luton Local Board of Health* v. *Davis* (1860), 2 E. & E. 678, decided under the Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 103, which contained the same words as those quoted in the text, *supra*.

(*k*) *Sandgate Local Board* v. *Pledge* (1885), 14 Q. B. D. 730.

(*l*) *R.* v. *Hannam* (1886), 34 W. R. 355, C. A.

(*m*) *Margate Corporation* v. *Pettman* (1912), 76 J. P. 145.

(*n*) This principle was laid down in *R.* v. *Hannam*, *supra*, by BOWEN, L.J., at p. 356, and has now been applied to a case where the rate was a rate authorised by a local Act, in the nature of a general district rate, and the exemption was created by the same local Act, in which Act the words "sufficient cause for non-payment" appeared (*Dixon* v. *Blackpool and Fleetwood Tramroad Co.*, *supra*, at p. 872). It appears to follow from this decision that a partial exemption under the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1) (b), is a matter which can be raised in answer to a summons for recovery of the general district rate itself ; see also *R.* v. *Shuttleworth, Ex parte Tickle* (1908), 72 J. P. 329.

rating authority (*o*); the fact that, although the valuation list, which the general district rate is bound to follow, has been altered upon objection, the general district rate has not been amended accordingly (*p*); where the owner is rated instead of the occupier, the question upon what proportion of the rateable value he ought to be assessed (*q*); and the fact that the urban authority has in its hands moneys overpaid in respect of previous rates by the persons summoned (*r*).

Appeal to quarter sessions.

190. A person who deems himself aggrieved by an order for payment made against him may appeal to the next court of quarter sessions, the conditions of and the procedure on such appeal being regulated by the Summary Jurisdiction Acts (*s*).

Special case.

Further, a special case may be stated by the court of summary jurisdiction which makes, or refuses to make, an order for payment (*t*).

Enforcement of orders for payment.

191. In default of compliance with an order for payment, the court of summary jurisdiction which made the order may by warrant cause the rate in arrear, together with the costs of the levy, to be levied by distress (*a*). The warrant may contain several sums (*b*). Upon default of distress, and upon formal proof of means given upon a summons issued for the purpose as in the case of a civil debt, and upon proof that the defaulter has refused or neglected to pay, the court may commit the defaulter; but, unless all these matters are proved, the court has no such power (*c*).

(*o*) *Baglan Bay Tin Plate Co., Ltd.* v. *John* (1895), 72 L. T. 805.

(*p*) *Sheffield Waterworks Co.* v. *Sheffield Corporation* (1885), 50 J. P. 6 (where the amendment had been made upon objection); and pp. 85, 88, 89, *ante*.

(*q*) *R.* v. *Barclay* (1881), 8 Q. B. D. 306, *per* CAVE, J., at p. 312.

(*r*) *Blackpool and Fleetwood Tramroad Co.* v. *Bispham with Norbreck Urban Council*, [1910] 1 K. B. 592.

(*s*) See title MAGISTRATES, Vol. XIX., pp. 589, note (*a*), 642 *et seq.* The Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 269, creates the right of appeal, but it is amended for the present purpose by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 4, Schedule; and *ibid.*, s. 6, applies to the appeal now under consideration the conditions and regulations contained in the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 31—33; and see title MAGISTRATES, Vol. XIX., pp. 643 *et seq.*

(*t*) And on a decision of a Divisional Court such a case is subject to appeal (*Southwark and Vauxhall Water Co.* v. *Hampton Urban Council*, [1899] 1 Q. B. 273, C. A.; affirmed [1900] A. C. 3). As to special cases stated by courts of summary jurisdiction, see title MAGISTRATES, Vol. XIX., pp. 650 *et seq.*; see also note (*c*), *infra*.

(*a*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 256; and see title DISTRESS, Vol. XI., pp. 216, 217.

(*b*) Public Health Acts Amendment Act, 1907 (7 Edw. 7, c. 53), s. 8; see also the Poor Rates Recovery Act, 1862 (25 & 26 Vict. c. 82).

(*c*) Summary Jurisdiction Acts, 1848 (11 & 12 Vict. c. 43), s. 22; 1879 (42 & 43 Vict. c. 49), ss. 6, 35; and see title MAGISTRATES, Vol. XIX., pp. 602, 603. In consequence of the absence of an absolute power of commitment, a proceeding under the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 256, is not a criminal cause or matter, and consequently there is an appeal from a judgment of the King's Bench Division upon a case stated in such a proceeding (Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 47; *Southwark and Vauxhall Water Co.* v. *Hampton Urban Council*, *supra*).

SECT. 6. General District Rate.

SUB-SECT. 7.—*Change of Occupation: Inability to Pay.*

192. Any premises unoccupied at the time of the making of the rate must be included in the rate, but the rate must not be charged while the premises are unoccupied (*d*).

Empty premises.

Apportionment in respect of period of non-occupation.

If any such premises are afterwards occupied during any part of the period for which the rate was made, and before the rate has been fully paid, the name of the incoming tenant must be inserted in the rate, and when inserted he is liable for a part of the rate calculated in the same proportion as the time from the commencement of his tenancy to the end of the period bears to the remainder of the period (*e*). There is also a provision imposing, *mutatis mutandis*, a proportionate liability on an owner or occupier who is assessed or liable to the rate when it is made, and who ceases during the period of the rate to be owner or occupier of the premises; and if a fresh owner or occupier comes in to the premises during the period he is liable for his proportionate part of the rate (*f*). A person who, though not assessed when the rate was made, becomes liable under these provisions, is subject to all the incidents of the rate as if he had been assessed in the first instance (*g*).

On ground of poverty.

193. The urban authority may reduce or remit the payment of any rate on account of poverty (*h*).

SECT. 7.—*Special Expenses Rate.*

Nature of the rate.

194. A special expenses rate is a rate made in a contributory place by the overseers of the parish in order to satisfy precepts in respect of contributions for "special expenses" addressed to them by the council of the rural district within which the contributory place is situate (*i*).

(*d*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (2). But there is a power to rate owners of certain classes of premises, whether the premises are occupied or not (*ibid.*, s. 211 (1) (a); and see p. 84, *ante*).

(*e*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (2). This provision appears to apply to an owner rated instead of an occupier, except in cases where the owner is rated whether the premises are occupied or not. As to the calculation of the period of the rate, and as to the method of apportionment, compare *Cheney* v. *Tallowin*, [1904] 2 K. B. 763, and the other cases cited in note (*s*), p. 68, *ante*, in reference to the somewhat similar provisions for apportionment of poor rate.

(*f*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (3). The owner is expressly mentioned in *ibid.*, s. 211 (3). Further, in the case of an owner or occupier who comes in to premises which were occupied at the time when the rate was made, there is no direction that his name should be inserted in the rate, as in the case of premises previously unoccupied.

(*g*) *Ibid.*, s. 211 (2), (3); see also *ibid.*, s. 221; and see pp. 88, 89, *ante*. As to the effect of bankruptcy on the provisions of the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (3), see *Re Thomas, Ex parte Ystradyfodwg Local Board* (1887), 57 L. J. (Q. B.) 39 (see p. 11, *ante*); and of winding-up, see *Re Wearmouth Crown Glass Co.* (1882), 19 Ch. D. 640 (see p. 11, *ante*); see also titles BANKRUPTCY AND INSOLVENCY, Vol. II., p. 217; COMPANIES, Vol. V., pp. 516, 535, 537, 579.

(*h*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 225.

(*i*) "Special expenses" and "contributory place" are defined by the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 229; see also titles LOCAL GOVERNMENT, Vol. XIX., pp. 335, 336; PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 381, 382. If the contributory place is conterminous

SECT. 7.
Special Expenses Rate.

195. The rate is levied upon the contributory place, or upon such part of it as lies within the parish, as a separate rate (*k*) in the same manner, subject to one exception (*l*), as a poor rate (*m*).

How levied.

There is no special provision in any statute prohibiting a special expenses rate from being made for retrospective purposes or allowing it to be so made. Although it is to be levied in the same manner as a poor rate, the principles which apply to a poor rate in this respect (*n*) have not been applied strictly to a special expenses rate. Thus, a special expenses rate can be made in any year to pay a debt incurred previously to that year, if the amount of it has only been ascertained by a judgment given in that year (*o*); further, such a rate can be made several years after the debt has accrued due, if payment of the debt was demanded within the year in which it accrued due, so that a rate might have been made to meet it in that year, and if the delay in taking proceedings is properly explained (*p*).

Retrospective effect

196. The rate, being levied in the same manner as a poor rate, is levied upon the same persons (*q*).

Persons assessed.

It is also, and for the same reason, made upon the rateable value shown in the valuation list (*r*) for the poor rate exactly as a poor rate is made upon that value (*s*), subject to one exception, namely, that a three-fourths exemption in respect of a special expenses rate applies to property of the same classes as those which enjoy a similar exemption in respect of a general district rate (*t*). It follows from the existence of this partial exemption that the Agricultural Rates Act, 1896 (*u*), does not apply to a special expenses rate (*v*).

Rateable value.

Apart from the above exception, the special expenses rate is

Applicability of provisions relating to poor rate.

with a parish, or is part of a parish, the precept is addressed to the overseers of that parish and the rate is made by them; if the contributory place lies partly in one parish and partly in another, a separate precept is addressed to the overseers of each parish, and a rate made in each parish to meet the precept (Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 230).

(*k*) If, however, the amount required to be raised in a contributory place is less than £10, or is so small that a rate required to raise it would be less than 1*d.* in the £, it is raised as if it were general expenses, that is to say, generally, by an addition to the poor rate (*ibid.*, s. 230, proviso).

(*l*) As to which, see the text, *infra.*

(*m*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 230.

(*n*) See p. 54, *ante.*

(*o*) *R.* v. *Leigh Rural Council*, [1898] 1 Q. B. 836, C. A.

(*p*) *Croydon Corporation* v. *Croydon Rural Council*, [1908] 2 Ch. 321, C. A. In each of the cases last cited a mandamus was issued to make a rate. These decisions somewhat limit the application of *Saul* v. *Wigton Rural Sanitary Authority* (1886), 51 J. P. 406; but compare *Jersey* (*Lord*) v. *Uxbridge Union Rural Sanitary Authority* (1891), 55 J. P. 165.

(*q*) See pp. 4 *et seq.*, *ante.*

(*r*) See p. 47, *ante.*

(*s*) See pp. 25 *et seq.*, *ante.*

(*t*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 230 (where these classes of property are described in the same terms as in *ibid.*, s. 211 (1) (b); see pp. 85, 86, *ante*); Public Health (Rating of Orchards) Act, 1890 (53 & 54 Vict. c. 17); Allotments Rating Exemption Act, 1891 (54 & 55 Vict. c. 33).

(*u*) 59 & 60 Vict. c. 16.

(*v*) *Ibid.*, s. 1 (2) (a); see p. 23, *ante.*

SECT. 7. Special Expenses Rate.

subject to the same provisions as apply to a poor rate with regard to the powers of overseers in relation to making, assessing, and levying the rate (*w*), and with regard to appeals (*x*), and to all other incidents; but allowance by justices is not required (*y*).

SECT. 8.—*Highway Rate.*

SUB-SECT. 1.—*In Urban Districts.*

Nature of the rate and exemptions.

197. In certain circumstances the cost of repair of highways in an urban district is borne not by the district fund and general district rate, but by a separate highway rate (*a*). The partial exemptions in respect of particular classes of property which apply to a general district rate do not apply to a highway rate (*b*), and a highway rate made by an urban authority is not subject to the limit imposed by the Highway Act, 1835 (*c*). A highway rate is made upon the occupiers of all property liable to be rated to the poor rate (*d*); consequently all exemptions applying to the poor rate (*e*) apply to the highway rate also; and a further exemption still attaches to any property which was legally exempt from the payment of highway rate before the 31st August, 1835 (*f*), as where the occupier of the property was liable *ratione tenuræ* to repair some highway in the parish and enjoyed in return an exemption from highway rates (*g*).

Rating of owners.

198. Where an order (*h*) for the rating of owners to poor rate is in force in any parish, the owners instead of the occupiers are

(*w*) See pp. 46 *et seq.*, *ante*.

(*x*) See pp. 57 *et seq.*, *ante*.

(*y*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 230. The provisions of *ibid.*, s. 269 (see p. 89, *ante*), as to appeals appear thus to be rendered inapplicable, but the matter is not quite free from doubt. The "other incidents" referred to appear to include the collection and recovery of the rate; and want of publication would appear to be a good ground of objection in proceedings for recovery; compare *Beeson* v. *Derby Overseers* (1903), 67 J. P. 282.

(*a*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 216 (3), and provisoes; and see title HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., pp. 125, 126.

(*b*) *Oxenhope Local Board* v. *Bradford Corporation* (1882), 47 J. P. 21, *per* FIELD, J., at p. 23. As to such partial exemptions, see pp. 85, 86, *ante*. The Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), does, however, apply to a highway rate (*ibid.*, ss. 1 (2), 9); but such classes of property as railways, docks etc. derive no benefit from the last-mentioned Act.

(*c*) 5 & 6 Will 4, c. 50, s. 35 (*i.e.*, 10*d.* in the £ at any one time, or 2*s.* 6*d.* in the £ in any one year, unless, with "the necessary consent, the rate is increased); see *Dyson* v. *Greetland Local Board* (1884), 13 Q. B. D. 946, C. A.

(*d*) Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 27; Rating Act, 1874 (37 & 38 Vict. c. 54), ss. 3, 10. As to rateable occupation, see pp. 4 *et seq.*, *ante*.

(*e*) See pp. 21 *et seq.*, *ante*.

(*f*) Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 33.

(*g*) See title HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., p. 90. This exemption continues to apply to such property, even after the liability of the holder of the property to repair any highway in the parish has been determined by an order made under the Highway Act, 1862 (25 & 26 Vict. c. 61), s. 35 (*Dalton Overseers* v. *North Eastern Railway*, [1900] A. C. 345).

(*h*) Under the Poor Rate and Assessment Collection Act, 1869 (32 & 33

assessed to the highway rate in the same way and with the same allowances as they are assessed to the poor rate under that order (*i*).

199. The highway rate is made upon the rateable value appearing in the valuation list for the time being in force (*k*).

Making and collection.

200. The highway rate must be made in such manner and form and for such period as the urban authority may appoint (*l*). The rate does not require its signature; nor need it be allowed by justices, nor be laid before the inhabitants in vestry (*m*); but it must be published in the same manner as a poor rate (*n*). Where the name of the owner or occupier is not known to the urban authority, he may be described as "the owner" or "the occupier" (*o*).

The highway rate is collected by such persons, either separately or together with any other rate, as the urban authority may appoint (*l*). Proceedings for recovery may be taken in the same way as in the case of a general district rate (*p*).

Appeal.

201. The provisions with regard to appeal against a highway rate are the same as with regard to appeal against a general district rate (*q*).

SUB-SECT. 2.—*In Rural Districts.*

As general expenses.

202. In rural districts there is no highway rate properly so called: the highway expenses of rural district councils are as a rule "general expenses" (*r*), and are raised by means of precepts

Vict. c. 41), s. 4. As to the nature and consequences of such an order, see p. 20, *ante*.

(*i*) Highway Rate Assessment and Expenditure Act, 1882 (45 & 46 Vict. c. 27), ss. 3, 10; Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 216. It appears to follow that the system of rating owners to poor rate under the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 3 (see p. 20, *ante*) does not apply to a highway rate.

(*k*) Highway Rate Assessment and Expenditure Act, 1882 (45 & 46 Vict. c. 27), s. 4, which also provides that, if the list in force is amended upon objection, the urban authority is to have notice and to alter its current rate. If the valuation list is altered as the result of a successful appeal against the poor rate (see pp. 59 *et seq.*, *ante*), no doubt the highway rate based on that list must be amended also. Power to amend the highway rate is given to the urban authority by the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 221. As to the valuation list, see pp. 47 *et seq.*, *ante*.

(*l*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 222.

(*m*) *Ibid.*, s. 217.

(*n*) *Ibid.*, s. 222. As to publication of poor rates, see p. 56, *ante*.

(*o*) Public Health Act, 1875 (38 & 39 Vict. c. 35), s. 220.

(*p*) *Ibid.*, s. 256; see pp. 90 *et seq.*, *ante*. As to proof of publication, see *Bird* v. *Adcock* (1878), 47 L. J. (M. C.) 123. It is doubtful whether an exemption can be set up in answer to proceedings for recovery of a highway rate (*R.* v. *Oxfordshire Justices* (1849), 18 L. J. (M. C.) 222; compare *Dixon* v. *Blackpool and Fleetwood Tramroad Co.*, [1909] 1 K. B. 860; and see p. 92, *ante*).

(*q*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 269; and as to appeals against a general district rate, see pp. 89, 90, *ante*. As to the effect on a highway rate of an objection against the valuation list and an appeal against the poor rate, see note (*k*), *supra*.

(*r*) In certain cases such expenses may be "special expenses," and are

SECT. 8. **Highway Rate.**

addressed to the overseers of parishes who pay the contribution required out of the poor rate (*s*).

SECT. 9.—*Private Improvement Rate.*

SUB-SECT. 1.—*In Urban Districts.*

Nature of the rate.

203. Certain expenses incurred by urban authorities, or for which they have become liable, are, or may be declared by the authority incurring them to be, private improvement expenses (*t*), and may be levied upon the occupier of the premises in respect of which they have been incurred by means of private improvement rates (*a*). Such rates are calculated so as to discharge the expenses incurred, together with interest at 5 per cent., in a period to be determined by the urban authority, but not exceeding thirty years (*a*).

Liability of occupier and owner.

204. The private improvement rate is made upon the occupier of the premises concerned; but if they are out of occupation for any period the rate becomes for that period a charge on the owner (*b*). In certain circumstances the occupier has a right of deduction against his landlord in respect of a part of the rate, and the landlord has a similar right against any superior landlord (*c*).

Redemption of rate.

The owner or occupier may at any time during the period for which the rate is made redeem the rate by paying the balance of the expenses referred to (*d*).

Applicability of provisions relating to general district rate.

205. The provisions as to the preparation of the rate, appeal, and collection and recovery are the same with regard to private improvement rates as to general district rates (*e*), with the exception, that in the case of a private improvement rate no publication is required (*f*).

then raised by a "special expenses rate," as to which see pp. 94 *et seq.*, *ante;* and generally on this subject, see the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 29; titles HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., pp. 126, 127; LOCAL GOVERNMENT, Vol. XIX., pp. 335, 336.

(*s*) Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 229, 230; and see p. 53, *ante*. As to the general duties of overseers with regard to the poor rate, see p. 46, *ante*.

(*t*) As to the expenses which may thus become private improvement expenses, see titles LOCAL GOVERNMENT, Vol. XIX., pp. 281, 282, 336, 337; PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 381, 382.

(*a*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 213. Where a local Act incorporates the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), ss. 167, 168, 190—197, or the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 70, private improvement rates may also be made and levied under those sections.

(*b*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 213; and see title LANDLORD AND TENANT, Vol. XVIII., p. 478.

(*c*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 214; and see title LANDLORD AND TENANT, Vol. XVIII., p. 478.

(*d*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 215.

(*e*) The provisions on these matters as to the general district rate are described on pp. 87 *et seq.*, *ante*.

(*f*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 222, proviso.

SUB-SECT. 2.—*In Rural Districts.*

SECT. 9. **Private Improvement Rate.**

206. A rural authority which has incurred or become liable for certain expenses which are, or are declared by the rural authority to be, private improvement expenses (*g*) may levy a private improvement rate in the same manner as an urban authority may do, and subject to the same provisions (*h*).

Powers of rural authority.

SECT. 10.—*Lighting Rate.*

207. Where the Lighting and Watching Act, 1833 (*i*), has been adopted in a parish or part of a parish, the expenses of administering the Act with regard to lighting are raised by means of a lighting rate (*j*). The rate is made by the overseers (*k*) in compliance with an order of the authority executing the Act, that is, the parish council (*l*), or, if there is no parish council, either the parish meeting (*m*) or the lighting inspectors (*n*).

Purpose of rate and by whom made.

208. The lighting rate is made upon the same persons upon whom a poor rate is made (*o*).

Persons assessed and basis of assessment.

Subject to certain special provisions, it is made upon the rateable value as shown in the last valuation made and acted upon for the poor rate (*p*). The Agricultural Rates Act, 1896 (*q*), does not apply by reason of the undermentioned special exemption (*r*) that applies to the lighting rate.

In respect, however, of houses, buildings and property other than

Rating of land.

(*g*) The classes of expenses which are, or may be declared to be, private improvement expenses in the case of a rural authority are not precisely the same as in the case of an urban authority; see titles LOCAL GOVERNMENT, Vol. XIX., pp. 281, 282, 336, 337; PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 381, 382.

(*h*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 232; see p. 98, *ante*.

(*i*) 3 & 4 Will. 4, c. 90.

(*j*) *Ibid.*, s. 33. As to the method of adoption and, generally, see titles GAS, Vol. XV., pp. 307, 308; HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., pp. 119 *et seq.*; LOCAL GOVERNMENT, Vol. XIX., pp. 243, note (*e*), 253, note (*v*), 257.

(*k*) Or persons fulfilling their duties (Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 37).

(*l*) *Ibid.*, s. 32; Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 7 (5)—(7); and see title LOCAL GOVERNMENT, Vol. XIX., pp. 246 *et seq.*

(*m*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 19 (10); and see title LOCAL GOVERNMENT, Vol. XIX., p. 258.

(*n*) Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 32. As to lighting inspectors, see title HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., p. 121.

(*o*) Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 33. As to the persons rateable to the poor rate, see pp. 4 *et seq.*, *ante*. There appears to be no reason why the provisions of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), as to the rating of owners to poor rate (see pp. 19, 20, *ante*), should not be applied to the lighting rate; compare *R.* v. *Oxfordshire Justices* (1854), 22 L. T. (o. s.) 219.

(*p*) Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 33, proviso. The effect of this provision read with the Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 28 (see p. 47, *ante*), appears to be that the rateable value for purposes of the lighting rate must be taken from the valuation list in force when the last preceding poor rate was made.

(*q*) 59 & 60 Vict. c. 16, s. 1 (2) (a); see p. 23, *ante*.

(*r*) See the text, *infra*.

SECT. 10. Lighting Rate.

land, the rate in the £ is to be three times as great as the rate in the £ in respect of land (*s*); and for this purpose any poor rate assessment which relates to property of both classes must be separated, but so that the assessment of the whole shall not be greater than in the last poor rate (*t*), courtyards, yards and gardens, other than market gardens or nursery grounds, being included with the houses, buildings or other property to which they are attached (*u*). "Land" for this purpose includes tithe and tithe rentcharge (*a*); a canal with its appurtenances (*b*); a railway line with signal boxes etc. (*c*); a brickfield with accessory buildings which cannot be rated separately therefrom (*d*); and water-mains (*e*). "Property other than land" includes coal-mines (*f*) and docks (*g*).

Limit of rate.

209. The sum to be raised by the lighting rate in any one year must not exceed the sum agreed upon for this purpose by the parish meeting (*h*).

Making.

The lighting rate is made and allowed in the same manner as a poor rate (*i*), and must be published in the same manner (*j*).

Appeal and objections.

The rate may also be appealed against in the same manner as a poor rate (*k*); but objections against a poor rate valuation list and appeals against a poor rate, if successful, operate to reduce the assessment to lighting rate (*l*).

(*s*) Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 33; *R.* v. *South Eastern Rail. Co.* (1884), 19 L. J. N. C. 121, following *R.* v. *Somersetshire Justices* (1858), 22 J. P. 431.

(*t*) Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 34.

(*u*) *Ibid.*, s. 34, proviso. But glass-houses in a market garden would apparently be in the class of "houses, buildings and property other than land"; compare *Smith* v. *Richmond*, [1899] A. C. 448 (see note (*f*), p. 85, *ante*); *Purser* v. *Worthing Local Board of Health* (1887), 18 Q. B. D. 818, C. A. (see note (*f*), p. 85, *ante*).

(*a*) Tithe Rating Act, 1851 (14 & 15 Vict. c. 50), s. 1.

(*b*) *R.* v. *Neath Overseers* (1871), L. R. 6 Q. B. 707.

(*c*) *R.* v. *Midland Rail. Co.* (1875), L. R. 10 Q. B. 389.

(*d*) *Crayford Overseers* v. *Rutter* (*D. & C.*), [1897] 1 Q. B. 650: the principle of the division between the two classes of property is discussed in the judgment in this case.

(*e*) *R.* v. *Southwark and Vauxhall Water Co.* (1856), 6 E. & B. 1008.

(*f*) *Thursby* v. *Briercliffe-with-Extwistle* (*Churchwardens etc.*), [1895] A. C. 32. The phrase quoted in the text, *supra*, however, does not appear to be confined to things *ejusdem generis* with houses and buildings (*ibid.*, *per* Lord HERSCHELL, L.C., at p. 38).

(*g*) *Peto* v. *West Ham Overseers* (1859), 2 E. & E. 144.

(*h*) Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 33; Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 7 (3); see also *Beechey* v. *Quentery* (1842), 10 M. & W. 65. The sum so agreed upon should include expenses of collecting the rate, otherwise these cannot be raised in addition.

(*i*) Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 33; see pp. 53 *et seq.*, *ante*.

(*j*) *R.* v. *Whipp* (1843), 4 Q. B. 141; see p. 56, *ante*.

(*k*) Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 67; *R.* v. *Whipp*, *supra*; see pp. 59 *et seq.*, *ante*.

(*l*) Because the Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 33, makes the poor rate valuation conclusive for the purposes of the lighting rate, subject to the partial exemption conferred by *ibid.*, s. 34; see the text, *supra*. There can therefore be no appeal specifically against

Collection and recovery.

210. The rate is collected by the overseers from the ratepayer in the same manner as the poor rate (*m*); and overseers succeeding those to whom the order for the levy is addressed may raise the sum required and collect arrears of rates (*n*). Upon a summons for a distress warrant against a ratepayer, the overseers need not prove that the Lighting and Watching Act, 1833 (*o*), has been properly adopted (*p*); nor can the ratepayer dispute its due adoption (*q*).

Duties and liabilities of overseers.

The overseers must pay the amount required by the order to the treasurer appointed under the Act (*o*) within three months from delivery of the order (*r*). In default of such payment, the amount required may be levied from the overseers by distress warrant signed by two justices (*s*); but, upon a summons for such a warrant, it is open to the overseers to show that the Act (*o*) has not been properly adopted (*t*).

SECT. 11.—*Parish Improvement Rate.*

Nature of the rate.

211. Where the Public Improvements Act, 1860 (*u*), has been adopted in any parish, a separate rate may be made for the parish called the "—— Parish Improvement Rate," if agreed to by a two-thirds majority of the parish meeting in a rural parish, or of a meeting of ratepayers in an urban parish (*v*). The rate is levied to defray part of the expenses of a public improvement made under the Act (*u*), but cannot be levied unless at least half the cost of the proposed improvement has been raised privately, and it is limited to 6*d.* in the £ (*a*).

SECT. 12.—*Sewers Rate.*

SUB-SECT. 1.—*Nature.*

Nature; and rating authorities.

212. "Sewers rates" are not rates levied for sanitary purposes, or for the construction or maintenance of "sewers" popularly so

the lighting rate on questions of amount, except as to the partial exemption; compare the similar remarks respecting general district rate at p. 89, *ante*. As to the remedies of ratepayers with regard to the poor rate, see pp. 57 *et seq.*, *ante*.

(*m*) Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 33; see p. 66, *ante*.

(*n*) Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 35.

(*o*) 3 & 4 Will. 4, c. 90.

(*p*) *R.* v. *Reynolds*, [1893] 2 Q. B. 75.

(*q*) *Clown Overseers* v. *Roberts* (1896), 61 J. P. 7. This contention can therefore apparently be raised only on appeal against the rate. It is difficult to reconcile the two cases last cited with the principle of *R.* v. *Kingswinford Overseers* (1854), 3 E. & B. 688; see the text, *infra*.

(*r*) Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), ss. 36, 37.

(*s*) *Ibid.*, s. 38.

(*t*) *R.* v. *Kingswinford Overseers*, *supra*; see the text, *supra*.

(*u*) 23 & 24 Vict. c. 30; and, as to such adoption, see titles LOCAL GOVERNMENT, Vol. XIX., p. 257; OPEN SPACES AND RECREATION GROUNDS, Vol. XXI., pp. 592, 593.

(*v*) Public Improvements Act, 1860 (23 & 24 Vict. c. 30), s. 4; Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 7 (3), 89, Sched. II. Such a rate is rarely, if ever, made; see, further, title COMMONS AND RIGHTS OF COMMON, Vol. IV., p. 600; OPEN SPACES AND RECREATION GROUNDS, Vol. XXI., pp. 592, 593.

(*a*) Public Improvements Act, 1860 (23 & 24 Vict. c. 30), ss. 6, 7.

SECT. 12. Sewers Rate.

called (*b*). They are rates levied by Commissioners of Sewers (*c*) and by drainage boards (*d*) for the purposes of those bodies, which include the drainage of fens and marshes, the construction and maintenance of cuts, dykes, and other drainage channels, the reclamation and protection of lands from rivers and from the sea, the construction and maintenance of embankments and sea walls, and similar objects. The expenditure which is met out of these rates is not primarily incurred for purposes of public health, though indirectly the public health may sometimes derive benefit therefrom.

Commissioners of Sewers. Statutory powers.

213. Many of the bodies styled "Commissioners of Sewers" have existed for centuries. It may be said generally that their authority is derived from the Bill of Sewers, 1531 (*e*); but no confident account can be given of the particular powers of any of such bodies without a minute examination of the commission (*f*) under which it acts and of any special Acts applying to it. Moreover, the diversity of practice among bodies of Commissioners of Sewers is believed to be very great; and as, in the case of many of them, their practice has been unchallenged for centuries (*g*), it may well be that such practice would not on all points stand the test of comparison with the actual powers conferred by commission or statute.

Modern legislation.

A number of enactments (*h*) dealing with their procedure were passed in the nineteenth century; but these are usually of an enabling nature, and only occasionally impose definite limitations on powers.

The present treatment of sewers rates is confined to a statement of so much of the law relating to sewers rates as is contained in the general statutes above referred to.

Drainage boards.

214. Drainage boards are bodies constituted under the Land Drainage Act, 1861 (*i*), and have the same powers, including powers with regard to rates, as are by that Act (*i*) or by any other Act of

(*b*) Moneys for these purposes are raised by means of rates levied under the Public Health Act, 1875 (38 & 39 Vict. c. 55) (see pp. 82 *et seq.*, *ante*), or under local Acts obtained by borough councils etc. (see, *e.g.*, the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 29; *Surbiton Urban District Council* v. *Upjohn* (1910), 74 J. P. 314, decided thereon), or, in certain cases, out of the borough rate; see also the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 207; title SEWERS AND DRAINS.

(*c*) As to Commissioners of Sewers, the constitution of their court, and their jurisdiction, see title COURTS, Vol. IX., pp. 220—222; and see the text, *infra*. As to directing Commissions of Sewers into the Duchy of Lancaster, see title CONSTITUTIONAL LAW, Vol. VII., p. 237.

(*d*) See the text, *infra*.

(*e*) Stat. (1531) 23 Hen. 8, c. 5.

(*f*) Some commissions are in the original form attached to the Bill of Sewers (stat. (1531) 23 Hen. 8, c. 5). But in many cases the original commissions have been recalled and fresh commissions granted from time to time.

(*g*) The standard account of the early practice is contained in Callis, Reading upon the Statute of Sewers, but this work is not always reliable as an exposition of law.

(*h*) Sewers Acts, 1833 (3 & 4 Will. 4, c. 22), ss. 14, 18; 1841 (4 & 5 Vict. c. 45), ss. 1—3, 7, 8; 1849 (12 & 13 Vict. c. 50), ss. 1, 2, 7, 8; Land Drainage Act, 1861 (24 & 25 Vict. c. 133); and see title COURTS, Vol. IX., pp. 221, 222.

(*i*) 24 & 25 Vict. c. 133.

Parliament, law or custom, vested in or exercisable by Commissioners of Sewers (*k*). The right of appeal against orders and rates made by drainage boards is, however, somewhat wider than against those made by Commissioners of Sewers (*l*).

Use of the term "Commissioners."

215. As their powers are practically identical, drainage boards are often spoken of as Commissioners of Sewers; and the term "Commissioners" is hereafter used as including bodies of both kinds, except where drainage boards are specifically mentioned.

Classification of sewers rates.

216. Sewers rates are of two classes, namely, general sewers rates (*m*) and special sewers rates (*n*).

A sewers rate is not imposed directly by Act of Parliament, and is not therefore a "parliamentary tax" within the meaning of these words as used in such documents as leases (*o*).

SUB-SECT. 2.—*General Sewers Rate.*

(i.) *Purposes.*

Power to defray expenses by rate.

217. By the statutory form of commission (*p*) the Commissioners are empowered to construct and maintain such works as walls, ditches, banks, and sewers, and to perform numerous duties of similar kinds. They may levy rates for defraying all expenses lawfully incurred by them (*q*). Rates levied for such purposes are general sewers rates, except where the expenses are those of any improvements in existing works or of any new works involving an expenditure of more than £1,000, in which cases the expenses are to be defrayed out of special rates (*r*).

Effect of prescriptive liability.

Where an individual is under a prescriptive liability to execute or maintain works, for example, where the owner of a piece of land fronting a river is liable to keep up that portion of the river bank which adjoins his land, the expense of doing any work which is within the prescriptive liability cannot be defrayed by means of a rate; but a rate may become necessary to defray the expenses of such work as repairing a bank damaged by an extraordinary storm, although some individual is liable by prescription to carry out all ordinary repairs to such bank (*s*).

(*k*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 67.

(*l*) *Ibid.*, s. 67, proviso; see *ibid.*, s. 33; and see p. 109, *post.*

(*m*) See the text, *infra.*

(*n*) See p. 112, *post.*

(*o*) *Palmer* v. *Earith* (1845), 14 M. & W. 428; and see title LANDLORD AND TENANT, Vol. XVIII., p. 490.

(*p*) Stat. (1531) 23 Hen. 8, c. 5, s. 1.

(*q*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 38, First Regulation. Apparently a judgment obtained against the Commissioners for negligence in the execution of their works may be satisfied out of rates; compare *Gallsworthy* v. *Selby Dam Drainage Commissioners*, [1892] 1 Q. B. 348, C. A.

(*r*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 38, Second Regulation.

(*s*) *Keighley's Case* (1609), 10 Co. Rep. 139 a, 140; *R.* v. *Somerset (Western Division) Sewers Commissioners* (1799), 8 Term Rep. 312; *R.* v. *Essex Sewers Commissioners* (1823), 1 B. & C. 477; *Fobbing Sewers Commissioners* v. *R.* (1886), 11 App. Cas. 449; *Baker* v. *Parry* (1905), 3 L. G. R. 684. But the prescriptive liability may extend even to the repair of extraordinary damage (*R.* v. *Leigh* (1839), 10 Ad. & El. 398). As to the prescriptive liability of riparian owners to repair banks, see titles EASEMENTS AND PROFITS À PRENDRE, Vol. XI., p. 318; WATERS AND WATERCOURSES.

SECT. 12. Sewers Rate.

Miscellaneous expenses met by general rate.

218. The following are miscellaneous expenses which may be defrayed out of general sewers rates:—expenses of jurymen (*t*), expenses of obtaining the issue of a commission of sewers, if it is issued, expenses of obtaining an Act to confirm a provisional order (*u*), expenses of instituting or defending legal proceedings (*v*), expenses of opposing a Bill in Parliament (*w*), expenses of the preliminary proceedings for executing works chargeable on special rates where the works cannot be carried out owing to the dissent of the proprietors (*a*).

Money borrowed.

219. Money borrowed by the Commissioners on the credit of the rates, together with interest thereon, may be paid out of the rates (*b*). It is payable out of the general sewers rate unless it has been borrowed to meet expenditure which can only be properly charged on a special sewers rate, in which case it is of course paid by means of a special rate.

Retrospective effect.

220. There is no general rule of law which prevents a general sewers rate from being made to defray expenses which have been incurred previous to the making of the rate (*c*).

(ii.) *Areas in which the Rate may be Levied.*

Rateable areas.

221. The Commissioners can, of course, only levy the rates within the geographical limits of the jurisdiction conferred upon them by their commission or local Act (*d*).

Separate rates.

Where the whole area within their jurisdiction is not benefited by the works maintained and constructed by them, or where different parts of that area are benefited by different works, it is competent for and, it is submitted, incumbent upon the Commissioners to divide that area and to make separate rates for the various parts of it, so that the rate for each part will defray the expenses incurred for the works which benefit that part (*e*).

Expenses of separate areas.

They may, and, it is submitted, must, fix the limits of the various "levels, valleys, or districts" so formed, and keep separate accounts for each such part of their area, so that each part bears its own expenses; and any expenses incurred in respect of two or more such parts must be apportioned among them (*f*). Apparently, however,

(*t*) Sewers Act, 1841 (4 & 5 Vict. c. 45), s. 7. As to such juries, see title COURTS, Vol. IX., pp. 221, 222.

(*u*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 27.

(*v*) *Ibid.*, s. 52.

(*w*) *R.* v. *Norfolk Sewers Commissioners* (1850), 15 Q. B. 549.

(*a*) *Griffiths* v. *Longdon Drainage Board* (1871), L. R. 6 Q. B. 738. As to these preliminary proceedings, see p. 112, *post.*

(*b*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 40.

(*c*) *Harrison* v. *Stickney* (1848), 2 H. L. Cas. 108; *Armitstead* v. *Durham* (1848), 11 Beav. 556; *R.* v. *Tower Hamlets Sewers Commissioners* (1830), 1 B. & Ad. 232; and compare *Gallsworthy* v. *Selby Dam Drainage Commissioners*, [1892] 1 Q. B. 348, C. A.; see note (*q*), p. 103, *ante.*

(*d*) *New Romney Corporation* v. *New Romney Commissioners of Sewers*, [1892] 1 Q. B. 840. As to the effect of part of the Commissioners' area being added to a borough, see *Bristol Corporation* v. *Gloucestershire Lower Level Sewers Commissioners* (1906), 70 J. P. 528.

(*e*) *R.* v. *Tower Hamlets Sewers Commissioners* (1829), 9 B. & C. 517.

(*f*) *R.* v. *Tower Hamlets Sewers Commissioners* (1830), 1 B. & Ad. 232; Sewers Act, 1833 (3 & 4 Will. 4, c. 22), s. 14.

each part so formed and separately rated must be itself a single geographical area, and the Commissioners cannot select a number of unconnected pieces of land standing above a certain level and make a separate rate in respect of them (*g*).

Partition into sub-districts and readjustment of areas.

222. The Commissioners have also power to partition their districts into sub-districts, fixing the boundaries of the latter, and to unite any separate districts or sub-districts within their commissions, and generally to re-adjust such districts and sub-districts (*h*). This power can only be exercised at a court specially holden for the purpose, of which ten clear days' notice must be given (*i*); and it may be that this restriction applies also to the previously existing powers of a similar character. It is submitted that any district or sub-district so formed must be a definite geographical area (*k*).

Rating of districts and sub-districts.

For every district or sub-district the Commissioners may, and, it is submitted, must, make a separate and distinct rate (*l*). It is probable that a separate account must be kept of the expenses incurred in respect of every such district or sub-district, and that any expenses common to two or more such districts or sub-districts must be apportioned among them (*m*).

Rate "in gross."

223. There is also power to make a rate "in gross" on each parish, township, or place within the jurisdiction of the Commissioners, so that the lands therein shall be rated in proportion to the benefit received by them as compared with the other places within the jurisdiction. Such a rate is made in a lump sum on the parish, township, or place, and is then apportioned among the individual occupiers of lands therein who are rateable to the general sewers rates. Ten days' notice in writing of the apportionment must be given to each such occupier before the next court of sewers to be held within the limits where the lands are situate. If no complaint is made at such next court the apportionment becomes conclusive; if there is any complaint, the Commissioners decide upon it (*n*), but their decision appears to be subject to appeal (*o*).

(*g*) *Knight* v. *Langport District Drainage Board*, [1898] 1 Q. B. 588, 593.

(*h*) Sewers Act, 1849 (12 & 13 Vict. c. 50), s. 1. As has been seen, the Commissioners possessed some part of these powers, if not the whole of them, even before the passing of the Sewers Act, 1849 (12 & 13 Vict. c. 50); see the text, *supra;* and see *St. Katharine Dock* v. *Higgs* (1845), 10 Q. B. 641, Ex. Ch.

(*i*) Sewers Act, 1849 (12 & 13 Vict. c. 50), s. 1, which applies the Sewers Act, 1833 (3 & 4 Will. 4, c. 22), s. 9. The notice must be given by advertisement in some newspaper of the county which is generally circulated in the district concerned.

(*k*) As under the Sewers Act, 1833 (3 & 4 Will. 4, c. 22), s. 14; see *Knight* v. *Langport District Drainage Board, supra.*

(*l*) Sewers Act, 1849 (12 & 13 Vict. c. 50), s. 2; compare *R.* v. *Tower Hamlets Sewers Commissioners* (1829), 9 B. & C. 517.

(*m*) Sewers Act, 1833 (3 & 4 Will. 4, c. 22), s. 14, the provisions of which, as to the matters mentioned in the text, *supra*, appear to be unaffected by the Sewers Act, 1849 (12 & 13 Vict. c. 50).

(*n*) Sewers Act, 1841 (4 & 5 Vict. c. 45), ss. 1—3.

(*o*) According to the Sewers Act, 1841 (4 & 5 Vict. c. 45), s. 3, the

SECT. 12. Sewers Rate.

Such a rate in gross may, it is submitted, be made for any purpose for which a general sewers rate can be made (*p*).

(iii.) *Persons Rateable.*

Property in respect of which persons are assessed.

224. The Commissioners are empowered to tax and assess any person "who hath or holdeth any lands or tenements or common of pasture or profit of fishing or hath or may have any hurt, loss or disadvantage" in the area within the commission which requires drainage or protection (*q*).

The general sewers rate is therefore leviable in respect of any lands or tenements, within the area of the commission, which are benefited by the works constructed or maintained by the Commissioners (*r*). The benefit may be direct or indirect, small or great (*s*). If the works for the maintenance or repair of which the rate is made will, or do, benefit the land in question, it is immaterial that when first constructed they did not benefit it (*t*).

A general sewers rate is not leviable in respect of tithe or tithe commutation rentcharge (*a*).

Liability of owners and occupiers.

225. The taxing words of the original form of commission (*b*) are wide enough in themselves to include both an owner and an occupier (*c*), and a mortgagor in possession by his tenant (*d*). But general sewers rates are now as a rule made only upon the occupiers of the hereditaments benefited, and the modern enactments (*e*) appear to take it for granted that these are the proper persons to be rated to these rates. Accordingly, the general sewers rate has been held to be a tenant's rate or tax within the meaning of those words in the definition of rateable value for poor rate purposes (*f*). Apart from any contract, an occupier who pays the general sewers rate appears to have no right to be reimbursed by his landlord (*g*).

Commissioners' decision is final, but the Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 47, appears to give a right of appeal.

(*p*) The purposes for which such a rate could be made were expressly limited by the Sewers Act, 1841 (4 & 5 Vict. c. 45), s. 1, read with the preamble; but the Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 38, First Regulation, if it applies to such a rate, appears to give it a wider scope.

(*q*) Form of commission annexed to stat. (1531) 23 Hen. 8, c. 5, s. 1.

(*r*) *Soady* v. *Wilson* (1835), 3 Ad. & El. 248; *Hammersmith Bridge Co.* v. *Hammersmith Overseers* (1871), L. R. 6 Q. B. 230; *Baker* v. *Parry* (1905), 3 L. G. R. 684; see also the cases cited in note (*t*), p. 110, *post.*

(*s*) Thus, it may consist merely in the improvement of access (*Soady* v. *Wilson, supra*; *Hammersmith Bridge Co.* v. *Hammersmith Overseers, supra*).

(*t*) *Baker* v. *Parry, supra.*

(*a*) *Hackney and Lamberhurst Tithe Commutation Rent Charges* (1858), E. B. & E. 1, 45, 46, not overruled on this point.

(*b*) See p. 102, *ante.*

(*c*) *Bennett* v. *Womack* (1828), 7 B. & C. 627; *Waller* v. *Andrews* (1838), 3 M. & W. 312.

(*d*) Compare *R.* v. *Baker* (1867), L. R. 2 Q. B. 621.

(*e*) See, *e.g.*, Sewers Act, 1841 (4 & 5 Vict. c. 45), s. 2; Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 38, Second Regulation, (1).

(*f*) *R.* v. *Hall Dare* (1864), 5 B. & S. 785, *per* COCKBURN, C.J., at p. 794; Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1; see p. 25, *ante.*

(*g*) *R.* v. *Hall Dare, supra.* The contrary appears to have been assumed, but not decided, in *Bennett* v. *Womack, supra* (cited in title LANDLORD

226. In deciding what amounts to occupation or rateable occupation for the purposes of a general sewers rate the same principles must, in general, it would seem, be applied as in the case of a poor rate (*h*). Rateable occupation.

The general sewers rate is, however, expressly made leviable in respect of property owned by the Crown, whether actually occupied by the Crown or its servants, or by tenants paying rent therefor (*i*). *A fortiori*, the rate is leviable in respect of land not actually belonging to the Crown, but used for the purposes of the general administration of the country (*k*). Crown property.

(iv.) *Basis of Assessment.*

227. A general sewers rate must be made at an equal sum in the £ upon the annual value of all the hereditaments in respect of which it is to be levied, and this annual value must be ascertained on the same principles as the rateable value for poor rate (*l*). Basis of assessment.

In ascertaining the annual value, houses or other improvements existing upon the lands rated must not be left out of account (*m*); and the amount at which any hereditament should be rated to any particular rate is in no way affected by the extent of the benefit which it derives from the works of the Commissioners (*n*). Where different hereditaments within the jurisdiction of the Commissioners receive different degrees of benefit from the works, any differentiation of rating must be effected by the making and levying of different rates for different portions of the Commissioners' area in the manner and subject to the limitations already described (*o*). Improvements. Differentiation of rating.

AND TENANT, Vol. XVIII., p. 475, note (*h*)); *Palmer* v. *Earith* (1845), 14 M. & W. 428; and see title LANDLORD AND TENANT, Vol. XVIII., p. 490. See, however, the Sewers Act, 1833 (3 & 4 Will. 4, c. 22), s. 18; note (*g*), p. 111, *post*. *Waller* v. *Andrews* (1838), 3 M. & W. 312, does not seem to affect this question. See *Smith* v. *Humble* (1854), 15 C. B. 321, as to the effect of a landlord's covenant to pay such a rate when the rateable value is increased during the tenancy by the erection of houses.

(*h*) See pp. 4 *et seq.*, *ante*. *Tracey* v. *Taylor* (1842), 3 Q. B. 966, and *Neave* v. *Weather* (1842), 3 Q. B. 984, appear to have been overruled in principle by *Mersey Docks* v. *Cameron*, *Jones* v. *Mersey Docks* (1865), 11 H. L. Cas. 443; see p. 16, *ante*.

(*i*) Stat. (1531) 23 Hen. 8, c. 5, s. 6; *Netherton* v. *Ward* (1819), 3 B. & Ald. 21; compare *Soady* v. *Wilson* (1835), 3 Ad. & El. 248; p. 14, *ante*.

(*k*) Stat. (1531) 23 Hen. 8, c. 5, s. 6, prevents the application to sewers rates of the principles of *Coomber* v. *Berkshire Justices* (1883), 9 App. Cas. 61; see p. 16, *ante*.

(*l*) *Knight* v. *Langport District Drainage Board*, [1898] 1 Q. B. 588; see *R.* v. *Head, etc.* (1863), 3 B. & S. 419; *Pew* v. *Metropolitan Board of Works* (1865), 6 B. & S. 235. For the principles regulating rateable value for the poor rate, see pp. 25 *et seq.*, *ante*.

(*m*) *Griffiths* v. *Longdon Drainage Board* (1871), L. R. 6 Q. B. 738.

(*n*) *Knight* v. *Langport District Drainage Board*, *supra*.

(*o*) See pp. 104, 105, *ante*. In spite of the decisions cited, it is believed that some bodies of Commissioners still make rates by which lands benefited in various degrees are rated at different rates in the £; while others make rates by which the lands rated are rated at so much an acre, irrespective of value. The latter practice is said to rest on the authority of Callis, Reading upon the Statute of Sewers (1824 ed.), pp. 127, 128, and of *Sewers Commissioners* v. *Owtwell* (*Inhabitants*) (1649), Sty. 178, 184, 191; *Sewers Commissioners* v. *Newburg* (1677), 3 Keb. 827; and the *Hull Level Case* (1740), 2 Stra. 1127. But even if these cases support that practice,

SECT. 12.

Sewers Rate.

(v.) *Making of the Rate.*

Statutory directions.

228. The following are the only statutory directions bearing upon the method of preparing or making a general sewers rate:—

Persons appointed by the Commissioners may inspect and take copies of or extracts from the poor rate for these purposes, and the officer having custody of the poor rate must permit this to be done under a penalty not exceeding £5, recoverable summarily (*p*).

If the Commissioners do not know the name of an "owner or occupier" liable to the rate, he may be designated in the rate simply as the "owner or occupier" of the land in respect of which the assessment is made (*q*).

A presentment of a jury is not necessary in order to enable the Commissioners to levy a rate (*r*).

(vi.) *Remedies of Ratepayers.*

Appeal against rate.

229. When the rate has been made by Commissioners of Sewers, properly so called (*s*), without the presentment of a jury (*t*), or when it has been made by a drainage board (*u*), any person aggrieved by the rate may appeal against it to quarter sessions (*v*). The appeal must be made within four months next after the making of the rate (*w*).

Notice of appeal.

The Commissioners or the drainage board, as the case may be, are entitled to ten days' notice in writing; and the notice must state the nature and grounds of the appeal. Within four days after the service of the notice, the appellant must enter into recognisances, with two sureties, before a justice, to prosecute and abide the order of the court on his appeal (*a*).

which is doubtful, they can no longer, it is submitted, be considered good law in view of the judgment of BLACKBURN, J., in *Griffiths* v. *Longdon Drainage Board* (1871), L. R. 6 Q. B. 738, at p. 743.

(*p*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 39. As to procedure before courts of summary jurisdiction, see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.*

(*q*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 38, Third Regulation, (4). This enactment applies to special rates also. As to special rates, see p. 112, *post*. It is submitted (see p. 106, *ante*) that, to a general sewers rate, the occupier alone is rateable.

(*r*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 33; but, as to appeal, see text, *infra*, p. 109, *post*. As to the functions of such a jury, see title COURTS, Vol. IX., p. 222.

(*s*) See p. 102, *ante*.

(*t*) There is no statute granting a right of appeal against a rate levied upon the presentment of a jury.

(*u*) As to drainage boards, see pp. 102, 103, *ante*.

(*v*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), ss. 47, 67. As to appeals to quarter sessions, see title MAGISTRATES, Vol. XIX., pp. 642 *et seq.*

(*w*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 47. If this provision is construed strictly considerable injustice may result, for there is no direction that a sewers rate is to be published in any way, and, consequently, a person aggrieved may find that his time for appealing has gone by before he has even heard that a rate has been made upon him. It will be safest to assume that by making the appeal is meant the entry of the appeal on the first day of the sittings at quarter sessions.

(*a*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 47.

The appeal presumably lies to the next court of quarter sessions held after the expiration of ten (*b*) days from the service of the notice.

Powers of quarter sessions.

230. The court may confirm, annul, or modify the rate (*c*). It may also, at any time after the notice has been given and the recognisances have been entered into, refer the appeal to arbitration on the application of either party; and the award of the arbitrator or arbitrators is enforceable as if it were an order of the court (*d*).

Other cases in which appeal lies.

231. There is a right of appeal to the Commissioners themselves against the apportionment of a rate made "in gross" (*e*).

As in the case of a poor rate, a number of matters which a person rated to a general sewers rate may raise upon appeal may also, it is apprehended, be raised in answer to proceedings for distress, or in actions for illegal distress (*f*).

(vii.) *Collection and Recovery.*

General regulation.

232. No particular method of collecting a general sewers rate is prescribed by statute or rule. But the manner of recovery from persons making default in payment is regulated by statute (*g*).

Distress.

233. No distress proceedings can be taken until after the rate has been demanded (*h*) and there has been a refusal to pay (*i*), and, before distress can be levied, a warrant for the purpose must, it is submitted, be obtained (*j*), in accordance with the following course of procedure:—Complaint must be made by a collector or other officer of sewers that a person duly rated and assessed to the sewers rate has been called upon to pay and has refused to do so (*k*). The complaint

(*b*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 47. Or possibly fourteen days; see the Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), s. 1; compare *R.* v. *Maule* (1871), 41 L. J. (M. C.) 47; and see title MAGISTRATES, Vol. XIX., p. 643.

(*c*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 47; see also the Sewers Act, 1841 (4 & 5 Vict. c. 45), s. 8, where these powers are stated in greater detail. In regard to matters other than those specified in the text, *supra*, *e.g.*, costs, stating special case, amendment of notice of appeal, and of defective recognisances, the powers of quarter sessions in these appeals appear to be regulated by the Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45); see title MAGISTRATES, Vol. XIX., pp. 642 *et seq.*

(*d*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), ss. 48, 49. These provisions appear to render inapplicable those contained in the Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), s. 13, but the parties may apparently, after notice of appeal given, concur in referring the matter to arbitration, or in stating a special case upon it, under *ibid.*, s. 12, or *ibid.*, s. 11, by order of a judge of the King's Bench Division, and without obtaining an order of the court of quarter sessions; and see title MAGISTRATES, Vol. XIX., pp. 649, 663.

(*e*) See p. 105, *ante*.

(*f*) See p. 110, *post*.

(*g*) See the text, *infra*.

(*h*) *Whitley* v. *Fawsett* (1647), Sty. 12.

(*i*) Sewers Act, 1849 (12 & 13 Vict. c. 50), s. 7. A neglect to pay within a reasonable time is probably a sufficient refusal; compare *Gibbs* v. *Stead* (1828), 8 B. & C. 528, 534, 535.

(*j*) *Sabourin* v. *Neale* (1836), 2 Har. & W. 103.

(*k*) See note (*i*), *supra*.

SECT. 12. Sewers Rate.

may be made to a single Commissioner, who may issue a summons to the person to show cause why he refuses to pay. The summons is returnable before any two (*l*) of the Commissioners. Upon the appearance of the person at the time and place specified in the summons, or, if he fails to appear, upon proof of service, and upon proof of the making of the rate and of the demand and refusal to pay, the Commissioners may issue a warrant to levy, by distress and sale of the person's goods, the arrears, and also the costs of obtaining the warrant, which must be specified, and the costs of executing it. A single summons and warrant may be issued for any number of rates (*m*), or against any number of persons (*n*). The warrant may be directed to the collector or other officer of sewers and to any other person, and may be executed by any one of the persons to whom it is addressed (*o*). The amount of the costs of executing the warrant by distress and sale is limited by statutory scale (*p*).

Summons issued by drainage board.

In the case of a rate made by a drainage board, it would appear that the summons and the warrant must be issued by a majority of the members present at a meeting of the board, of which three members form a quorum (*q*).

Proof required for issue of warrant.

234. Besides proof of the making of the rate and proof of the default, proof is necessary before a distress warrant is issued that the rate was made by persons having jurisdiction to make it (*r*), that the person against whom the warrant is applied for was in occupation of the lands in respect of which the rate was made (*s*), and that those lands were in fact benefited by the works of the Commissioners (*t*).

(*l*) But as to rates made by drainage boards, see the text, *infra*.

(*m*) Sewers Act, 1849 (12 & 13 Vict. c. 50), s. 7, the provisions of which appear to override those of the Sewers Act, 1841 (4 & 5 Vict. c. 45), s. 3. As to the recovery of an apportioned rate in gross, see p. 105, *ante*.

(*n*) Sewers Act, 1849 (12 & 13 Vict. c. 50), s. 8.

(*o*) *Ibid.*, s. 9.

(*p*) *I.e.*, the scale scheduled to the Distress (Costs) Act, 1817 (57 Geo. 3, c. 93); applied to any distress or levy made for sewers rates by the Distress (Costs) Act, 1827 (7 & 8 Geo. 4, c. 17); compare *Coster* v. *Headland*, [1906] A. C. 286; *Scott* v. *Denton*, [1907] 1 K. B. 456; and see title DISTRESS, Vol. XI., pp. 186, 187, 220. The Distress for Rates Act, 1849 (12 & 13 Vict. c. 14), does not apply to sewers rates; and see, generally, as to distress for rates, title DISTRESS, Vol. XI., pp. 210 *et seq.*

(*q*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), ss. 67, 70, Sched., Part II., r. 1 (a), (c).

(*r*) *Whitley* v. *Fawsett* (1647), Sty. 12; *Wingate* v. *Waite* (1840), 6 M. & W. 739.

(*s*) *Neave* v. *Weather* (1842), 3 Q. B. 984.

(*t*) *Brungy* v. *Lee* (1649), Sty. 178; *Anselm* v. *Barnard* (1670), 2 Keb. 675; *Masters* v. *Scroggs* (1815), 3 M. & S. 447; *Neave* v. *Weather*, *supra*. And this is so even where a jury has presented that the lands are benefited by the works (*Stafford* v. *Hamston* (1821), 2 Brod. & Bing. 691). These decisions have generally been given in actions of illegal distress or of trespass; but the same principles must apply to proceedings under the Sewers Act, 1849 (12 & 13 Vict. c. 50). In *Metropolitan Board of Works* v. *Vauxhall Bridge Co.* (1857), 7 E. & B. 964, it was held that the question of existence or non-existence of benefit was not open in distress proceedings; but there were special provisions for appeal in the Metropolitan Sewers Act, 1848 (11 & 12 Vict. c. 112), now repealed; and it is submitted that

Any one of these matters may therefore afford a good ground of objection on the part of the person summoned to show cause why he refuses to pay (*a*).

Grounds of objection to warrant.

It is apprehended that the issue of a distress warrant is an act or order which may be appealed against in the same way as the rate itself (*b*).

Overplus from sale.

235. Any overplus arising from the sale after satisfying the distress warrant must be returned on demand to the party whose goods have been distrained (*c*).

Proceedings in default of distress.

236. There does not appear to be any power to commit in default of distress for sewers rates; but, if no distress can be found to satisfy the distress warrant, there is a provision for raising the sums specified in the warrant, together with the costs of raising them, out of the lands of the defaulter within the jurisdiction of the Commissioners (*d*).

Crown lands.

237. Sewers rates made in respect of lands of the Crown may be recovered by distress in the same way as rates made in respect of lands in private ownership or occupation (*e*); but no distress may be levied in a royal palace which is occupied as the residence of the Sovereign, or which might be so occupied (*f*).

Successive occupation.

238. Any person who comes into occupation of lands after the making of the rate is liable to pay in respect of the rate a sum calculated in proportion to the time during which he occupies the lands. A person, occupying lands at the time of making the rate, who subsequently goes out of occupation, and is succeeded by another occupier, is liable to pay a sum calculated in proportion to the time during which he occupied the lands. Any dispute between the parties as to the proportion is decided by the Commissioners. An outgoing occupier cannot claim (whether against the Commissioners or against a succeeding occupier is not clear) a larger amount than has been actually paid by him, and has not been repaid by his landlord (*g*).

the decision on this point is of no general authority as against the series of cases just cited. It has already been pointed out that the quantum of benefit is immaterial; see p. 106, *ante*.

(*a*) Compare the cases cited in title DISTRESS, Vol. XI., pp. 210 *et seq.*, and at pp. 66 *et seq.*, *ante*, with regard to objections which may be raised in answer to a summons for a distress warrant for poor rate. In respect to both rates the principle appears to be that only such matters can be raised in these proceedings as go to the jurisdiction to make the rate on a particular person rated. It seems clear that in respect of sewers rate, as in respect of poor rate, the amount upon which the person has been rated cannot be questioned in such proceedings; and see title DISTRESS, Vol. XI., pp. 212, 213.

(*b*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 47; see p. 108, *ante*. The question depends on whether the issue of the warrant is an "order made" or "act done" within the meaning of the Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 47.

(*c*) Sewers Act, 1849 (12 & 13 Vict. c. 50), s. 7.

(*d*) *Ibid.*, s. 7, proviso; compare also stat. (1531) 23 Hen. 8, c. 5, s. 5.

(*e*) Stat. (1549—50) 3 & 4 Edw. 6, c. 8, s. 2.

(*f*) *A.-G.* v. *Donaldson* (1842), 10 M. & W. 117.

(*g*) Sewers Act, 1833 (3 & 4 Will. 4, c. 22), s. 18. The "time" referred

SECT. 12. Sewers Rate.

SUB-SECT. 3.—*Special Sewers Rate.*

(i.) *Purposes.*

Definition.

239. A rate levied by the Commissioners to defray the expense of any improvements in existing works or of any new works, where the improvements or new works involve an expenditure of more than £1,000, is a special sewers rate (*h*).

Meaning of "improvements."

By the term "improvements" is meant deepening, widening, straightening, or otherwise improving any existing watercourse or outfall for water, or removing milldams, weirs, or other obstructions to watercourses or outfalls for water, or raising, widening, or otherwise altering any existing wall or other defence (*i*).

Meaning of "new works."

By "new works" is meant making any new watercourse or new outfall for water, or erecting any new defence against water, erecting any machinery, or doing any other act, not described in the Land Drainage Act, 1861 (*j*), as "maintenance" or "improvement" of existing works, required for drainage, the necessary supply of water for cattle, warping or irrigation; but where any old work is so much out of repair or so inefficient as to make it expedient to construct a new work in place thereof, the substituted work is not to be deemed a "new work" (*k*).

(ii.) *Conditions Precedent.*

Preparation and publication of plans, estimates, and list of proprietors.

240. A special sewers rate cannot be made unless certain preliminary requirements have been complied with. The Commissioners must cause to be made—(1) plans of the proposed improvements or new works, (2) an estimate of the expense, (3) an estimate of the area within which a rate will be required to levy the expense, and (4) a list of the names and addresses of the reputed proprietors of land within that area, showing the number of acres of which each is the reputed proprietor. A notice explaining the nature of the works, the expense, and the area, and stating where the above-mentioned documents may be inspected, must be published by advertisement in a newspaper circulating within the jurisdiction of the Commissioners once a week for two months before the improvements or new works are commenced, and on the church doors for three successive Sundays (*l*). During those two months any person interested may apply to have the list of reputed

to appears to be the time of occupation within the period of the rate; compare as to this point, and as to the method of apportionment generally, *R.* v. *Tempest, Ex parte Townend* (1898), 14 T. L. R. 199; *Davis* v. *Woodfield* (1900), 81 L. T. 782; *Cheney* v. *Tallowin*, [1904] 2 K. B. 763. Where a person in occupation at the time of making the rate goes out of occupation and is not succeeded during the period of the rate by another occupier, he appears to get no relief, but to be liable for the whole of the rate.

(*h*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 38, Second Regulation (1).

(*i*) *Ibid.*, s. 16 (1).

(*j*) 24 & 25 Vict. c. 133. As to the power to make and maintain new drains in the land of adjoining owners under this Act, see title LAND IMPROVEMENT, Vol. XVIII., p. 303.

(*k*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 16 (3), proviso (2).

(*l*) *Ibid.*, s. 29.

proprietors corrected (*m*). If within those two months the proprietors of one half of the area within which the notice shows that it is proposed to levy the rate give to the Commissioners notice in writing of their dissent, the proposed improvements or new works cannot be carried out (*n*). Otherwise the works may proceed, and the expenses are raised by special sewers rates; but such expenses must not exceed the originally published estimate (*o*).

(iii.) *Areas in which the Rate may be Levied.*

Areas liable to be rated.

241. It would seem (*p*) that a special sewers rate may be levied in any geographical area, within the jurisdiction of the Commissioners, which will be benefited by the proposed improvements or new works, and that such area need not be conterminous with any division of the Commissioners' district that has been made for other purposes; and may include the whole of their district.

(iv.) *Persons Rateable.*

Leviable in respect of lands benefited.

242. A special sewers rate is, it is submitted, only leviable in respect of lands benefited by the improvements or new works the cost of which it is levied to defray (*q*), the mere fact that lands are situate within the area mentioned in the preliminary notice (*r*) not justifying a levy upon them if they are not in fact benefited.

Upon owners of the lands.

The special rate is levied upon the owner of the lands in respect of which the rate is made, that is, on the person for the time being entitled to receive the rack rent, or who would be entitled to receive it if the land were let at a rack rent. The term "rack rent" includes any rent which is not less than two-thirds of the net annual value of the land out of which the rent issues (*s*). The owner, if his name is unknown to the commissioners, may be described as "owner" in the rate, without more (*t*).

Not a tenant's rate.

A special sewers rate is not therefore, like a general sewers rate (*u*), a tenant's rate or tax within the meaning of the definition

(*m*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 30.

(*n*) *Ibid.*, s. 31. In this case any expenses incurred in the previous proceedings are met out of a general sewers rate (*Griffiths* v. *Longdon Drainage Board* (1871), L. R. 6 Q. B. 738; see p. 104, *ante*).

(*o*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 31. Even if the expenses are met in the first instance out of loans raised under *ibid.*, s. 40 (see p. 104, *ante*), the money necessary to repay the principal and interest is raised by special sewers rates.

(*p*) This seems to follow from the facts that the provisions as to the proceedings preliminary to the making of a special rate (see pp. 112, 113, *ante*) are largely concerned with the area within which the rate "will be required to be levied," and that these provisions do not refer to those enactments (see pp. 104, 105, *ante*) by which the Commissioners are empowered to make divisions for other purposes.

(*q*) The cases to this effect in respect of general sewers rates are cited in note (*r*), p. 106, note (*t*), p. 110, *ante*, and there is nothing to suggest that special rates are to be made on a different principle.

(*r*) Issued under the Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 29; see p. 112, *ante*.

(*s*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 38, Second Regulation, (1), (3).

(*t*) *Ibid.*, s. 38, Third Regulation, (4).

(*u*) See p. 106, *ante*.

SECT. 12. Sewers Rate.

of rateable value to the poor (*a*); but it appears to be an "expense necessary to maintain the hereditament in a state to command the rent" within the meaning of that definition, and to be therefore deductible from the gross estimated rental in arriving at the rateable value (*b*).

(v.) *Basis of Assessment.*

Principles of assessment.

243. A special sewers rate should, it is submitted, be assessed on the same principles as a general sewers rate (*c*), namely, at an equal sum in the £ upon annual value, and not differentially according to the degree of benefit enjoyed by the lands in respect of which the rate is made (*d*).

(vi.) *Making of the Rate.*

Making of the rate.

244. The statutory provisions as to the making of general sewers rates (*e*) apply to special sewers rates also. But the conditions precedent already described (*f*) must be fulfilled before a special sewers rate can be made.

(vii.) *Remedies of Ratepayers.*

Remedies of ratepayers.

245. Persons rated to special sewers rates have, it is apprehended, the same remedies as persons rated to general sewers rates (*g*).

(viii.) *Collection and Recovery.*

General provisions.

246. The provisions already stated (*h*) in respect of the collection and recovery of general sewers rates apply also to special sewers rates, with the exception of the provisions as to change of occupation (*i*).

Recovery from occupier.

In addition, the Commissioners have power (*j*), when the owner of any land, who is the person actually rated, makes default in paying any rate due from him, to levy the rate upon the occupier of the land, in the same way (*k*) as if the occupier were the person

(*a*) See *R.* v. *Hall Dare* (1864), 5 B. & S. 785; see note (*g*), p. 106, *ante*; and see p. 26, *ante*.

(*b*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1; compare *R.* v. *Gainsborough Union* (1871), L. R. 7 Q. B. 64; see pp. 25, 30, *ante*.

(*c*) See p. 107, *ante*.

(*d*) In *Knight* v. *Langport District Drainage Board*, [1898] 1 Q. B. 588, a special sewers rate was in question as well as a general sewers rate, and the decision upon both rates was as stated in the text, *supra*: see p. 107, *ante*.

(*e*) See p. 108, *ante*.

(*f*) See p. 112, *ante*.

(*g*) See p. 108, *ante*.

(*h*) See pp. 109 *et seq.*, *ante*.

(*i*) Contained in the Sewers Act, 1833 (3 & 4 Will. 4, c. 22), s. 18; and see p. 111, *ante*. There is no special provision regarding the collection of a special sewers rate when a change of ownership has taken place during the period of the rate; apparently in such a case the person who was the owner at the time when the rate was made is liable for the whole of the rate.

(*j*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 38, Second Regulation, (2).

(*k*) That is, by distress and sale of goods or, in default thereof, by distraining upon the lands, according to the procedure outlined *ante*, pp. 109 *et seq.*

rated (*l*). No occupier can be required to pay on account of the owner more than the rent due, or that may accrue due from the occupier during the period of his occupancy; and the occupier may deduct the sum so paid from his rent, in the absence of any agreement to the contrary; and the Commissioners' receipt for any rate so paid by the occupier is a sufficient discharge (*l*). This provision does not apply unless the rate has been demanded from the owner and he has made default (*m*).

SECT. 12. Sewers Rate.

Part V.—Rates and Rating in the Metropolis.

SECT. 1.—*The Metropolis.*

247. For rating purposes the "Metropolis" means the unions and parishes not in union for the time being situate within the jurisdiction of the London County Council (*n*). It includes the City of London.

Definition of "Metropolis."

SECT. 2.—*Basis and System of Valuation.*

SUB-SECT. 1.—*The Valuation List in Force.*

248. The rates levied in the Metropolis (*o*) are based upon rateable value, as in the rest of England. The definitions of "rateable value" and "gross value" in force in the Metropolis (*p*) are in somewhat different language from those in force outside (*q*); but the effect of the definitions is practically the same. Maximum rates of deduction between gross value and rateable value are, however, prescribed for various classes of property (*r*).

Meaning of "rateable value" and "gross value."

249. For the purposes of metropolitan rates, the valuation list in force is conclusive evidence of rateable value; and no hereditament not appearing in the valuation list in force can be inserted in

The valuation list in force.

(*l*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 38, Second Regulation, (2); and see title LANDLORD AND TENANT, Vol. XVIII., p. 478.

(*m*) Compare *Whitley* v. *Fawsett* (1647), Sty. 12; and see p. 109, *ante*.

(*n*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 3, 4; Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 40 (8), 100. As to the inclusion of South Hornsey, see Order in Council of the 15th May, 1900, under the London Government Act, 1899 (62 & 63 Vict. c. 14), s. 18; and see title METROPOLIS, Vol. XX., p. 393.

(*o*) See pp. 126 *et seq.*, *post*.

(*p*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 4.

(*q*) That is, "rateable value" defined in the Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1; "gross estimated rental" defined in the Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 15; see p. 25, *ante*.

(*r*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 52, Sched. III. As to the meaning of the footnote to the schedule, see *Western* v. *Kensington Assessment Committee*, [1908] 1 K. B. 811, C. A.

SECT. 2. **Basis and System of Valuation.**

any rate (*s*). That list is also conclusive evidence of the total rateable value of a parish for the purpose of county rate and other contributions (*t*).

Currency.

The valuation list in force is the current "quinquennial" list subject to any alteration made therein by any "supplemental" or "provisional" list; it is altogether superseded in its turn, when a new quinquennial list comes into force (*u*).

When "quinquennial" list and "supplemental" list are made.

A "quinquennial" list is made in every fifth year (*a*), and comes into force on the 6th April in the year succeeding that in which it is made (*b*); a "supplemental" list is made, unless one is unnecessary, in each of the first four years following the making of a quinquennial list (*c*), and any alteration made by a supplemental list becomes part of the valuation list in force on the 6th April in the year succeeding that in which such list is made (*d*). These lists come into force unaltered, although there may be appeals against them pending on the 6th April (*e*).

When "provisional list" is made.

A "provisional" list may be made at any time; it has operation from the date when the occupier concerned is served with a copy of the list and a prescribed notice (*f*); and it continues in force until the first quinquennial or supplemental list comes into force, which is finally approved by the assessment committee, subsequently to the date of such service (*g*).

SUB-SECT. 2.—*Quinquennial List.*

Functions of overseers.

250. The quinquennial list is made and signed by the overseers of each parish (*h*) in the prescribed form (*i*), and is deposited by them in the place in such parish where rate-books are deposited, notice

(*s*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 45.

(*t*) *Ibid.*; and, as to the county rate, see pp. 69 *et seq.*, *ante*.

(*u*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 43, 46 (2), (5), (6).

(*a*) The quinquennial list now current was made during 1910, and came into force on the 6th April, 1911. It, and any supplemental or provisional lists amending it, will be superseded on the 6th April, 1916, by a new quinquennial list made during 1915.

(*b*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 43.

(*c*) *E.g.*, in 1911, 1912, 1913, and 1914; see note (*a*), *supra*.

(*d*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 43, 46 (4), (5). "Year" is defined in *ibid.*, s. 4, as the twelve months from the 6th April to the 5th April inclusive. For definitions of terms of time, see title TIME.

(*e*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 4, 44. *Ibid.*, s. 44, contains a provision for adjustment, upon the decision of the appeal, in respect of amounts overpaid or underpaid, this provision applying even where the appeal is allowed upon a question of occupation (*Burton* v. *Bloomsbury Vestry*, [1901] 1 K. B. 650).

(*f*) But see note (*h*), p. 125, *post*.

(*g*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 47 (3), (8); *Parrish* v. *Hackney Corporation*, [1912] 1 K. B. 669, C. A. A provisional list does not, however, affect the total values of the parish, or any contribution based on them (Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 47 (10)). As to alteration of the current rate by a provisional list, see p. 126, *post*.

(*h*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 6. As to the bodies which perform in a metropolitan parish the duties of overseers, see title METROPOLIS, Vol. XX., p. 407.

(*i*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 5, Sched. II.; Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), ss. 5, 9; Agricultural

of deposit being given as in areas outside the Metropolis (*j*), but stating also the time and mode of making objections (*k*). The making and deposit should be carried out before the 1st June (*l*). At the time of deposit the overseers must send a duplicate of the list to the surveyor of taxes (*m*).

Returns and particulars for list.

Overseers may require returns from owners and occupiers to help them in making the list (*n*). The list should contain all hereditaments capable of being rated, whether occupied or not (*o*), and should probably contain the gross and rateable values of any hereditament which enjoys a total or partial exemption from rates (*p*). The hereditaments shown are to be divided into classes (*q*). The total annual value on which the Crown pays a contribution in lieu of rates must be shown (*r*).

Notice to owner or occupier.

Immediately after deposit the overseers must, in all cases where a hereditament is inserted in the list for the first time, or at an increased gross or rateable value, serve a notice on the occupier, or on the owner if he is liable to pay any rate or tax instead of the occupier (*s*).

Assessment committee.

251. The assessment committee is appointed in the City of London by the Common Council (*t*), and in the rest of the Metropolis, where the whole of a poor law union is within one metropolitan borough, by the borough council, the town clerk being its

Rates Order, 1896 (Stat. R. & O. Rev., Vol. X., Poor, England, p. 469), art. 18; see also *R.* v. *City of London Assessment Committee*, [1907] 2 K. B. 764, 784, C. A.

(*j*) See pp. 48 *et seq.*, *ante*.

(*k*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 1, 7, 10, 60; Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 17; see p. 49, *ante*; but see also Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 66.

(*l*) *Ibid.*, s. 42 (1). But a list is not rendered null by the fact that it has not been made, deposited, transmitted, or approved within the times specified in *ibid.*, s. 42 (*R.* v. *Ingall* (1876), 2 Q. B. D. 199).

(*m*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 8.

(*n*) *Ibid.*, ss. 55, 56, 58; Valuation (Metropolis) Amendment Act, 1884 (47 & 48 Vict. c. 5), s. 2. The penalty for refusing or neglecting to make any required return is a fine not exceeding £5. The penalty for making a false return is a fine not exceeding £10. The penalties are recoverable summarily (Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 58). As to the procedure before courts of summary jurisdiction, see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.*

(*o*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 14; compare *R.* v. *Malden* (1869), L. R. 4 Q. B. 326. "Hereditament" is defined in the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 4; see also *ibid.*, s. 51.

(*p*) *R.* v. *Foundling Hospital* (1871), L. R. 7 Q. B. 83; *R.* v. *City of London Assessment Committee*, [1907] 2 K. B. 764, C. A.; see also Metropolis Management Act, 1875 (38 & 39 Vict. c. 33), ss. 2—4.

(*q*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), Sched. III.; see note (*r*), p. 115, *ante*.

(*r*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 30; and see p. 47, *ante*.

(*s*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 9 (1); Valuation (Metropolis) Amendment Act, 1884 (47 & 48 Vict. c. 5), s. 2. As to the effect of omission to give such a notice, see *Westminster Corporation* v. *Army and Navy Auxiliary Co-operative Supply, Ltd.*, [1902] 2 K. B. 125.

(*t*) City of London (Union of Parishes) Act, 1907 (7 Edw. 7, c. cxl.), s. 14.

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clerk (*u*); otherwise the assessment committee is appointed by the guardians of the union (*a*). It has power to require returns from owners and occupiers (*b*).

Transmission of list to assessment committee and revision of list.

252. The overseers should transmit the list to the assessment committee not sooner than fourteen and not later than seventeen days after giving notice of deposit (*c*). The assessment committee, who within fourteen days of receipt must give a prescribed notice to railway and certain other companies interested (*d*), must then proceed to revise the list (*e*). The assessment committee must hear and decide upon objections at a meeting for the purpose, which must be held not less than sixteen days after the transmission of the list to the committee, and of which it must give not less than sixteen days' notice (*f*); and it may also make such alterations as it thinks fit, irrespective of any objection being made (*g*). The revision should be completed before the 1st October (*h*).

Objections to list.

253. Objections may be made by any person who is aggrieved by reason of any of certain specified matters (*i*). If a ratepayer, he must give notice before the expiration of twenty-five days after the list is deposited (*k*); a notice by the surveyor of taxes or the overseers must be given not less than seven days before the meeting for hearing objections (*l*). The notice of objection must specify the correction desired (*m*), as well as the grounds; and, when given by a

(*u*) London Government Act, 1899 (62 & 63 Vict. c. 14), s. 13; and see title METROPOLIS, Vol. XX., pp. 437, 438.

(*a*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 2; Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 5.

(*b*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 57; and, as to penalties for default, see *ibid.*, s. 58; note (*n*), p. 117, *ante*.

(*c*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 17; Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 42 (2); *R.* v. *Ingall* (1876), 2 Q. B. D. 199; see p. 49, *ante*. As to the steps to be taken if the overseers fail to transmit a valuation list, see Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 13.

(*d*) Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 5.

(*e*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 14.

(*f*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 19; Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 14, 42 (4), (5); see p. 49, *ante*.

(*g*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 20; Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 1, 14; see p. 50, *ante*.

(*h*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 42 (4); *R.* v. *Ingall*, *supra*; see p. 116, *ante*.

(*i*) The persons who may object include the surveyor of taxes, and any ratepayer in the parish (Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 11, 12; Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 18). They probably also include any owner, and they clearly include an owner who is liable or has agreed to pay the rates (*ibid.*; Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 4 (definition of "ratepayer"); Valuation (Metropolis) Amendment Act, 1884 (47 & 48 Vict. c. 5), s. 2); and see p. 49, *ante*.

(*k*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 42 (3).

(*l*) *Ibid.*, s. 42 (6).

(*m*) *Ibid.*, s. 11. For form of notice, see Encyclopædia of Forms and Precedents, Vol. XI., pp. 236, 262.

ratepayer, must be given to the overseers and the assessment committee, and also to any third person whose under-assessment or non-assessment is complained of (*n*). The notice may be served by post or otherwise (*o*). In hearing the objection, the assessment committee cannot, without the consent of the overseers, deal with any ground not raised in the notice (*p*). Generally, the powers of the assessment committee in regard to these matters are the same as outside the Metropolis (*q*).

Approval and re-deposit of list.

254. When the assessment committee has completed its revision it approves the list, and within three days sends it to the overseers for re-deposit (*r*). Notice of re-deposit is given by the overseers in the same way as notice of deposit (*s*), and, where a hereditament has been (apart from objection) inserted for the first time, or at an increased assessment, the overseers must give notice to the occupier, or to the owner, if he is liable to pay a rate or tax in place of the occupier (*t*).

Hearing objections to alterations.

The assessment committee must appoint a day, not less than fourteen nor more than twenty-one days after re-deposit, for hearing objections to the alterations; and seven days' notice of objection must be given (*a*).

Final approval of list.

After hearing the objections made on re-deposit and making any further alterations in the list, the assessment committee finally approves the list (*b*) and causes the gross and rateable values to be totalled, the list being signed by three members present at the meeting at which it is finally approved; and duplicates of the list are sent to the London County Council and to the overseers (*c*). This should be done before the 1st November (*d*). The overseers

(*n*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 18; and see pp. 49, 50, *ante*. For forms of objection and appeal, see Encyclopædia of Forms and Precedents, Vol. XI., pp. 224—264.

(*o*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 65.

(*p*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 19; *R.* v. *London Justices*, [1897] 1 Q. B. 433.

(*q*) See pp. 49, 50, *ante*. As to their powers upon an objection by a surveyor of taxes, see Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 53.

(*r*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 21; Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 42 (7); and see p. 50, *ante*.

(*s*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 10, 66; see p. 117, *ante*.

(*t*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 9 (2); Valuation (Metropolis) Amendment Act, 1884 (47 & 48 Vict. c. 5), s. 2; compare note (*s*), p. 117, *ante*.

(*a*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 42 (7). It is submitted that no notice of objection can be given at this stage in respect of matters which appeared in the list as originally deposited and are unaltered.

(*b*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 20, 21; see p. 50, *ante*.

(*c*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 14—17; Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 44.

(*d*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 42 (8); *R.* v. *Ingall* (1876), 2 Q. B. D. 199; see note (*l*), p. 117, *ante*.

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must deposit their duplicate, giving notice of deposit and of the time, mode, and grounds of appeal (*e*).

Inspection of list.

255. A ratepayer may inspect and take copies or extracts from the valuation list without fee, when deposited (*f*), or when in the possession of the assessment committee (*g*).

SUB-SECT. 3.—*Appeals against the Quinquennial List.*

Nature of appeal.

256. A ratepayer, the overseers, or the surveyor of taxes may appeal to special sessions, but only if aggrieved by a decision of the assessment committee on an objection with regard to value (*h*).

Special sessions.

Special sessions for hearing such appeals are held by the justices for every petty sessional division at any time after the 30th November, which will enable them to determine all appeals, if they can do so, before the ensuing 1st January (*i*). Notice of the time of sitting must be given to the overseers to be published (*k*).

Notice of appeal.

Notice in writing of the appeal, specifying the corrections desired, must be given on or before the 21st November to certain specified persons (*l*).

Jurisdiction and powers of special sessions.

The special sessions may not hear an appeal touching any matter in respect of which notice of appeal has already been given to quarter sessions, and may only decide on questions of value. If they so decide, they may alter the value stated for the particular hereditament in the valuation list; but such an alteration does not affect the totals of the values therein appearing (*m*). Subject to the limitations just stated, their powers as to the order in which they hear appeals, as to adjournment, amendment of notice of appeal, confirmation or alteration of the list, and costs are the same as in the case of quarter sessions hearing an appeal against the list (*n*). As to "all matters necessary for the execution of their duties" under

(*e*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 15, 66. The deposit is made in the same place, and the notice is published in the same way as in the case of the first deposit of the list; see p. 117, *ante*. As to appeals, see the text, *infra*.

(*f*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 67.

(*g*) *Ibid.*, ss. 68, 69; compare p. 49, *ante*.

(*h*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 19. It does not appear that the appellant need have been a party to the objection; compare *ibid.*, s. 32; and see the text, *infra*.

(*i*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 18, 42 (10); *R.* v. *Ingall* (1876), 2 Q. B. D. 199; *R.* v. *London County Justices and London County Council*, [1893] 2 Q. B. 476, C. A.

(*k*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 22.

(*l*) *Ibid.*, ss. 33, 42 (9). As to the manner of giving the notice, see *ibid.*, s. 65; and as to recognisances (which must be entered into within seven days after giving the notice) etc., see Orders of London Quarter Sessions, 1898, rr. 1, 2; see note (*q*), p. 122, *post*. The notice may include more than one hereditament separately assessed in the same list (Valuation (Metropolis) Amendment Act, 1884 (47 & 48 Vict. c. 5), s. 3; see p. 121, *post*). For forms of notice to and from special sessions, see Encyclopædia of Forms and Precedents, Vol. XI., pp. 244, 246, 261.

(*m*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 20, 21, 34, 39; see pp. 123, 127, *post*.

(*n*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 34, 39.

the Valuation (Metropolis) Act, 1869 (*o*), they have the same powers as if assembled in petty sessions (*p*).

Appeal to county quarter sessions.

257. An appeal lies to the County of London Quarter Sessions (*q*) against a decision of the assessment committee, on an objection made before them to which the appellant was a party, or against a decision of the special sessions, whether the appellant was a party or not (*r*). Such an appeal is open to any ratepayer (*s*) and to any surveyor of taxes (*t*), as well as to a metropolitan borough council, and to the Common Council of the City of London, as overseers of the parish (*u*).

Sittings.

Sittings of quarter sessions for the purpose of hearing these appeals may not be held until after the 1st February in the calendar year following the making of the list, and should be held if possible at a time which will enable them to determine the appeals before the 31st March (*v*), ten days' notice of the first day of meeting being given by the clerk (*a*).

Grounds of appeal.

An appeal to quarter sessions against the decision of an assessment committee may be brought on any ground taken on objection before the committee (*b*). An appeal against the decision of special sessions may only be brought upon a question of value (*c*). The same appeal may include more than one hereditament separately assessed in the same valuation list of which the appellant is or is deemed to be the occupier or ratepayer (*d*). If the appellant accepts the gross value appearing in the list, the respondents cannot show that it is too low (*e*).

Notice of appeal to quarter sessions.

Notice of appeal in writing, specifying the correction desired, must be served on or before the 14th January (*f*) upon the assessment committee in every case, and also upon the surveyor of

(*o*) 32 & 33 Vict. c. 67.

(*p*) *Ibid.*, s. 21. It is doubtful whether the special sessions have power to state a case for the opinion of the High Court.

(*q*) See title MAGISTRATES, Vol. XIX., p. 621.

(*r*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 32; Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 42 (10); City of London (Union of Parishes) Act, 1907 (7 Edw. 7, c. cxl.), s. 29.

(*s*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 32 (see definition of "ratepayer," *ibid.*, s. 4); Valuation (Metropolis) Amendment Act, 1884 (47 & 48 Vict. c. 5), s. 2.

(*t*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 32.

(*u*) *Ibid.*; London Government Act, 1899 (62 & 63 Vict. c. 14), ss. 4 (1), 11 (1); City of London (Union of Parishes) Act, 1907 (7 Edw. 7, c. cxl.), ss. 11, 13.

(*v*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 42 (13); *R.* v. *London County Justices and London County Council*, [1893] 2 Q. B. 476, C. A. In practice, it never is possible to do this with regard to appeals relating to a quinquennial list, and some of these are heard months after the 31st March.

(*a*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 42 (14).

(*b*) *Ibid.*, s. 32; *R.* v. *London Justices*, [1897] 1 Q. B. 433; *Western* v. *Kensington Assessment Committee*, [1908] 1 K. B. 811, C. A.; and as to objections before the assessment committee, see p. 118, *ante*.

(*c*) Because the appeal is against the decision, which can itself only proceed upon a question of value; see p. 120, *ante*.

(*d*) Valuation (Metropolis) Amendment Act, 1884 (47 & 48 Vict. c. 5), s. 3.

(*e*) Compare *Horton & Son* v. *Walsall Assessment Committee*, [1898] 2 Q. B. 637; see p. 64, *ante*.

(*f*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 33, 42 (12).

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taxes, whenever the gross value is challenged (*g*). The appeal must be entered by lodging a copy of the notice with the clerk of the court on or before the same date; recognisances must then be entered into or security deposited, and the appellant must, where the rateable value appealed against exceeds £300, state his "case" on or before the 1st February (*h*).

Appearance on appeal.

The assessment committee may appear on any appeal (*i*) with the consent of the borough council or of the guardians, whichever of these bodies appoints the committee (*j*). Respondents must give notice of their intention to appear as such on or before the 28th January, and must state their "case" as above (*k*).

Powers of quarter sessions.

258. The quarter sessions have power to appoint the order in which they will hear the appeals, to adjourn the hearing from time to time, and to confirm the valuation list or alter it in any manner not in contravention of the Valuation (Metropolis) Act, 1869 (*l*). In certain circumstances they may allow notice of appeal to be given out of time, or to be amended (*m*). On the application of either party they may appoint a person to make a valuation of the hereditament concerned (*n*). The court hearing the appeal may award costs to be paid by any of the parties as they think just (*o*), but cannot order the assessment committee to pay costs, if it appears without the consent of the borough council or guardians, as the case may be (*p*). As to procedure generally, the quarter sessions hearing these appeals have the ordinary powers of quarter sessions (*q*).

For form of notice, see Encyclopædia of Forms and Precedents, Vol. XI., p. 248.

(*g*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 33, which contains provision for service on other persons also, in certain cases.

(*h*) Orders of London Quarter Sessions, 1898, rr. 3—10, 21; see note (*q*), *infra*.

(*i*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 62. Although the committee's clerk is mentioned in *ibid.*, s. 62, he has no right of audience (*R.* v. *London Justices*, [1896] 1 Q. B. 659, C. A.).

(*j*) Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 2; Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 1, 5 (b); *R.* v. *London Justices* (1907), 2 Konstam's Rating Appeals, 587. As to appointment of the assessment committee, see p. 117, *ante*.

(*k*) Orders of London Quarter Sessions, 1898, rr. 7, 8, 21; see note (*q*), *infra*.

(*l*) 32 & 33 Vict. c. 67.

(*m*) *Ibid.*, s. 34.

(*n*) *Ibid.*, ss. 36, 37, 38; compare p. 51, *ante*. Beyond this they appear to have no power to compulsorily refer the appeal to arbitration.

(*o*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. 67), s. 39; *Hodge & Sons* v. *Poplar Union* (1881), Ryde's Rating Appeals (1886-90), 284; *R.* v. *General Assessment Sessions* (1887), Ryde's Rating Appeals (1886-90), 268. As to recovery of costs, see p. 63, *ante*.

(*p*) *R.* v. *London Justices* (1907), 2 Konstam's Rating Appeals, 587; and see p. 63, *ante*.

(*q*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 26. Various matters of practice are regulated by the Orders of London Quarter Sessions (made under the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 27); see Ryde on Rating, 3rd ed., pp. 944 *et seq.* Tables of fees made under the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 28, are annexed to these Orders. As to the manner of making the alterations in the list ordered by the quarter sessions, see *ibid.*, ss. 34, 41. As to the procedure before courts of quarter sessions, see, generally, title MAGISTRATES, Vol. XIX., pp. 643 *et seq.*

The appeals may be heard by the chairman or deputy-chairman sitting alone (*r*). A member of an assessment committee of one union is not, as such, disqualified from sitting to hear an appeal from a different union (*s*). The court may state a special case for the opinion of the High Court (*t*).

Appeal against total of gross or rateable values.

259. An appeal against the total of the gross or rateable values shown in the valuation list for any parish on the ground that it is too high or too low may be brought to quarter sessions (*a*) by any ratepayer, by an assessment committee, by overseers (*b*), or by any other body which levies rates or contributions out of rates (*c*). Such an appeal is necessary whenever the valuation of a particular hereditament has been altered on appeal by special sessions or quarter sessions (*d*). It may also lie on other grounds (*e*), but cannot be brought on the ground that particular hereditaments are under-assessed (*f*).

Appeal on ground of no valuation list.

The same parties may appeal on the ground of there being no approved valuation list for the parish (*g*); and if on any appeal it so appears, the quarter sessions may appoint a person to make a list (*h*).

SUB-SECT. 4.—*Supplemental List.*

Purpose of supplemental list.

260. In each of the first four years of the quinquennial period (*i*) a supplemental list is made showing all alterations which have taken place in any of the matters stated in the valuation list in force in the preceding twelve months, but containing only the hereditaments affected (*k*). If no such alteration has taken place, a

(*r*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 42 (5). As to the chairman, see title MAGISTRATES, Vol. XIX., p. 621.

(*s*) *R.* v. *London Justices, Ex parte South Metropolitan Gas Co.* (1907), 2 Konstam's Rating Appeals, 642; 71 J. P. 476; and see p. 65, *ante*.

(*t*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 40.

(*a*) *Ibid.*, s. 32. The powers of quarter sessions upon such an appeal are the same as upon appeals relating to particular hereditaments. For form of notice of appeal, see Encyclopædia of Forms and Precedents, Vol. XI., p. 252.

(*b*) See p. 126, *post*.

(*c*) See pp. 126—128, *post*.

(*d*) *R.* v. *Woolwich Union Guardians*, [1891] 2 Q. B. 712.

(*e*) See *R.* v. *City of London Assessment Committee*, [1907] 2 K. B. 764, C. A.; *R.* v. *County of London Justices*, [1912] 2 K. B. 556.

(*f*) *London County Council* v. *St. George's Union Assessment Committee*, [1894] A. C. 600.

(*g*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 32 (3); see *R.* v. *City of London Assessment Committee, supra*.

(*h*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 35, 37.

(*i*) *E.g.*, in 1911, 1912, 1913 and 1914, but not in 1915, when a new quinquennial list will be made; see p. 116, *ante*.

(*k*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 46 (1); *R.* v. *Poplar Union Assessment Committee* (1884), 13 Q. B. D. 364, C. A.; *Camberwell Assessment Committee* v. *Ellis*, [1900] A. C. 510. As to a supplemental list taking its place as part of the valuation list in force, see Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 46 (1); and see p. 116, *ante*. "Twelve months" probably means "year" as defined in the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 4, *i.e.*, from 6th April to 5th April; see note (*d*), p. 116, *ante*.

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certificate to that effect is sent by the overseers to the assessment committee (*l*).

What alterations may or may not be included.

261. An alteration, to justify its insertion in a supplemental list, must be one specifically affecting the value of the hereditament in question; a general rise, or fall, in values is not sufficient (*m*); nor is an increased premium paid for a new lease sufficient (*m*).

A structural alteration is not necessary (*n*); where rateable value is based upon the power to earn profit, an increase (*o*) or a decline (*p*) in the capacity of the hereditament for earning profit (shown by an actual reduction of receipts) is sufficient, provided it is not due to a merely temporary cause (*p*); and a decline in the value of licensed property due to the imposition by Act of Parliament of higher licence duties is sufficient (*q*).

No revaluation.

The hereditament inserted is not to be revalued, but a deduction or addition is to be made showing the effect of the alteration upon the value shown in the valuation list in force at the commencement of the twelve months (*r*).

Procedure with regard to supplemental list.

262. The duties and procedure for the making, revision, and approval of, and appeals against, a supplemental list are the same as in the case of a quinquennial list (*s*); and the rights of objection and appeal are similar, and are regulated by the same provisions (*t*). A ratepayer who is aggrieved by the omission to insert his hereditament in a supplemental list has also similar rights of objection and appeal to quarter sessions on that ground (*a*).

SUB-SECT. 5.—*Provisional List.*

Purpose of provisional list.

263. A provisional list is made if in the course of any year (*b*) there is an increase or reduction in the value of any hereditament from any cause similar to those causes which justify insertion in a

(*l*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 46 (1), Sched. II.

(*m*) *Camberwell Assessment Committee* v. *Ellis*, [1900] A. C. 510. The causes which justify inclusion in a supplemental list are the same as those which justify the making of a provisional list (S. C., *sub nom. Ellis* v. *Camberwell Assessment Committee*, [1900] 1 Q. B. 68, 74, C. A.). As to the provisional list, see the text, *infra*.

(*n*) *R.* v. *New River Co.* (1879), 4 Q. B. D. 309; *R.* v. *Poplar Union Assessment Committee* (1884), 13 Q. B. D. 364, C. A.; *Camberwell Assessment Committee* v. *Ellis*, *supra*; *R.* v. *St. Mary's, Islington, Assessment Committee* (1887), 19 Q. B. D. 529 (provisional list).

(*o*) *R.* v. *New River Co.*, *supra*.

(*p*) *R.* v. *Poplar Union Assessment Committee*, *supra*; *R.* v. *St. Mary's, Islington, Assessment Committe*, *supra*; *R.* v. *Southwark Assessment Committee*, [1909] 1 K. B. 274, C. A. (provisional list).

(*q*) *R.* v. *Shoreditch Assessment Committee, Ex parte Morgan*, [1910] 2 K. B. 859, C. A. (provisional list).

(*r*) *R.* v. *Poplar Union Assessment Committee*, *supra*.

(*s*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 46 (3); see pp. 116 *et seq.*, *ante*.

(*t*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 46 (3), (4); see pp. 118, 120, *ante*.

(*a*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 46 (3), (4), 11, 32. For forms of notices of objection and appeal, see Encyclopædia of Forms and Precedents, Vol. XI., pp. 243, 244, 255.

(*b*) "Year" is defined by the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 4); see note (*a*), p. 116, *ante*; and compare note (*k*), p. 123, *ante*. For the definitions of time generally, see title TIME.

supplemental list (*c*). It contains only the gross and rateable values of the hereditaments affected and may be made at any time in the year (*d*).

Procedure with regard to provisional list.

264. The overseers may send a provisional list to the assessment committee of their own accord, and must do so if requisitioned by the assessment committee, or any ratepayer in the union, or the surveyor of taxes (*e*). If a requisition is sent to the overseers, the person making it must send a copy to the assessment committee; and if the overseers make default within fourteen days after the requisition has been served on them and a *primâ facie* case of diminution is made out, the assessment committee must appoint a person to make such a list, and can be compelled by mandamus to do so (*f*). On receipt of the list, the assessment committee must serve a copy on the surveyor of taxes, and on the ratepayer concerned, together with a notice of the date and mode of making objections (*g*), and the list is, in practice, treated as having operation from the date of the service on the ratepayer (*h*). Objections may then be made within the time stated in the last-mentioned notice, either on the ground that the hereditament ought not to appear in the list or on grounds available in the case of a quinquennial list; and they are determined in the same way as objections to a quinquennial list (*i*). If no objection is made in

(*c*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 47; *Ellis* v. *Camberwell Assessment Committee*, [1900] 1 Q. B. 68, 74, C. A. These causes have been already described, and certain of the cases cited in notes (*n*), (*p*), p. 124, *ante*, were decided with reference to provisional lists. There is some doubt as to whether a provisional list can be made if the increase or decrease has taken place in the previous year (*R.* v. *St. Mary, Bermondsey, Overseers* (1884), 14 Q. B. D. 351, 357).

(*d*) A provisional list is a temporary measure, designed to give the increase or reduction an immediate effect on the rates; and there may be as many such lists for the parish in the year as there are hereditaments affected.

(*e*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 47 (1). For form of requisition, see Encyclopædia of Forms and Precedents, Vol. XI., p. 257.

(*f*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 47 (2), 13; *R.* v. *St. Mary's, Islington, Assessment Committee* (1887), 19 Q. B. D. 529; *R.* v. *Southwark Assessment Committee*, [1909] 1 K. B. 274, C. A.; *R.* v. *Hammersmith Assessment Committee, Ex parte Shepherd's Bush Improvements, Ltd.* (1909), 73 J. P. 433; *R.* v. *Shoreditch Assessment Committee, Ex parte Morgan*, [1910] 2 K. B. 880, C. A. Mandamus will not, however, issue to compel the overseers to make such a list (*R.* v. *St. Mary, Bermondsey, Overseers* (1884), 14 Q. B. D. 351).

(*g*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 47 (3). For form of notice, see Encyclopædia of Forms and Precedents, Vol. XI., p. 241.

(*h*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 47 (8). The speech of Lord ATKINSON in *Metropolitan Water Board* v. *Phillips* (1912), 18th November, H. L. (not yet reported), throws some doubt on the correctness of the view that is taken in practice. As to the incorporation of the provisional list in the valuation list in force, and as to its continuance in operation, see p. 116, *ante*.

(*i*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 47 (4)—(6). It is doubtful whether the committee has power to make any alteration in the list, otherwise than on objection. For notices of objection and appeal, see Encyclopædia of Forms and Precedents, Vol. XI., pp. 224—264.

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time, or when any objection made has been determined, the assessment committee causes a copy of the list to be made, with any alterations made in it by the committee, and returns the list and copy, signed and dated by its clerk, to the overseers (*k*).

No appeal lies against a provisional list (*l*).

Effect on current general rate.

265. The current general rate (*m*) is affected by the provisional list from the date of its coming into operation (*n*). Entries are made in the rate by the overseers, and the occupier of the hereditament affected is liable, as from that date, for the rate assessed upon the rateable value appearing in the provisional list (*o*). If, when the next revision of the valuation list takes place, the quinquennial or supplemental list as approved and altered on appeal contains a lower rateable value, the amount overpaid is repaid or allowed (*p*).

SECT. 3.—*Rates Levied in the Metropolis.*

SUB-SECT. 1.—*The Metropolitan Boroughs: General Rate.*

Duty as overseers with regard to poor rate.

266. The council of each metropolitan borough acts as the overseers of every parish within the borough (*q*).

It is the duty of the borough council as overseers to levy a poor rate in order to raise certain sums which the council is required by precepts or orders to pay to other authorities and which must be raised by means of the poor rate (*r*). These authorities are—the London County Council, which issues precepts to satisfy the county rate (*s*); boards of guardians (*t*); and the Receiver of the Metropolitan Police District (*a*). The poor rate is, however, made and levied together with the general rate as one rate, which is called the general rate (*b*).

(*k*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 47 (7).

(*l*) *Fulham Union Assessment Committee* v. *Wells* (1888), 20 Q. B. D. 749; *Parrish* v. *Hackney Corporation*, [1912] 1 K. B. 669, C. A.; see *London County Council* v. *Shoreditch Borough Council* (1911), 75 J. P. 386.

(*m*) See the text, *infra*.

(*n*) As to this date, see p. 116, *ante*.

(*o*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 47 (9).

(*p*) *Ibid.*, s. 47 (10).

(*q*) London Government Act, 1899 (62 & 63 Vict. c. 14), s. 11 (1); see title METROPOLIS, Vol. XX., p. 407.

(*r*) London Government Act, 1899 (62 & 63 Vict. c. 14), s. 11 (2). As to the duties of overseers to raise various moneys out of the poor rate in order to satisfy precepts addressed to them, see pp. 53 *et seq.*, *ante*. Provision for the raising of contributions to the common poor fund in places in the Metropolis where there is no poor rate is contained in the Metropolitan Poor Act, 1867 (30 & 31 Vict. c. 6), s. 67. As to the metropolitan common fund, see titles METROPOLIS, Vol. XX., p. 415; POOR LAW, Vol. XXII., p. 549.

(*s*) See p. 127, *post*.

(*t*) See p. 128, *post*.

(*a*) See p. 127, *post*.

(*b*) London Government Act, 1899 (62 & 63 Vict. c. 14), s. 10 (2); see title METROPOLIS, Vol. XX., p. 440. In the Metropolis, the county rate includes the whole of the expenses of education, the London County Council being the local education authority for the whole county (Education Act, 1902 (2 Edw. 7, c. 42), s. 1; Education (London) Act, 1903 (3 Edw. 7, c. 24), Sched. I. (1)); and there is no limit to the amount which

267. The London County Council issues from time to time to the borough council precepts to satisfy the county rate in respect of each parish in its borough (*c*). The amount required in respect of each parish is calculated upon the total rateable value of the parish as shown in the valuation list for the time being in force (*d*).

County rate.

The county rate includes, besides general county contributions (*e*) and special county contributions (*f*), an "equalisation charge" (*g*), which is levied, as a separate item, on the parishes from which it is due. Its amount is calculated as follows:—a contribution of 6*d.* in the £ on the rateable value of each parish is charged against each parish for the year; the whole amount of these contributions is called the "equalisation fund." Every half-year half the fund is apportioned among the parishes in proportion to their population, the amount apportioned to each parish being called "the grant." If the grant due to the parish is less than its contribution, the difference is levied from the borough council as above stated, in respect of the particular parish. If the grant is more than the contribution, the difference is paid to the borough council out of the fund and credited to the particular parish for certain specified expenses. Where a borough contains two or more parishes, and the aggregate of the contributions of those parishes is less than the aggregate of the grants due to them, the difference is paid to the borough council from the fund, and no equalisation charge is levied from any of those parishes. A separate account of the county fund is kept for the equalisation fund (*h*).

Equalisation charge.

Equalisation fund.

268. Precepts or warrants are also issued to the borough councils to collect out of the poor rate a portion of the expenses of the Metropolitan Police District; and the sums required are payable to the Receiver (*i*). The amount to be raised by rates and by the

Police expenses.

it may levy out of rates for the purpose of aiding higher education (Education (London) Act, 1903 (3 Edw. 7, c. 24), Sched. I. (2)); and see, further, title METROPOLIS, Vol. XX., pp. 438, 439.

(*c*) The powers of the London County Council in respect of the making of county rates and the issue of precepts to satisfy them are the same as those of a county council in the country; see pp. 69 *et seq.*, *ante*, and Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 3 (i.), 40 (9). The precepts are issued to metropolitan borough councils by virtue of the London Government Act, 1899 (62 & 63 Vict. c. 14), s. 11 (2). As to the form of the precept, see London (Financial Arrangements) Scheme, 1900, Stat. R. & O., 1900, p. 392.

(*d*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 45; see p. 116, *ante*. No county rate basis is prepared in the Metropolis (Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 77 and Sched. I.). In parishes in the Metropolis in which there is agricultural land, the amount required is calculated in proportion to the rateable value of the parish reduced by one half the rateable value of the agricultural land in the parish (as shown in the valuation list) (Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), s. 3).

(*e*) As to general county contributions, see p. 69, *ante*.

(*f*) As to special county contributions, see p. 69, *ante*.

(*g*) As to this see, further, title METROPOLIS, Vol. XX., pp. 442, 443.

(*h*) London (Equalisation of Rates) Act, 1894 (57 & 58 Vict. c. 53); London (Financial Arrangements) Scheme, 1900; London Government Act, 1899 (62 & 63 Vict. c. 14), s. 4 (1).

(*i*) Metropolitan Police Act, 1829 (10 Geo 4, c. 44), ss. 23—26; London

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Treasury contribution together is limited to 11*d.* in the £ on the rateable value of the parish (*k*), subject to a correction in respect of the pension fund (*l*).

Expenses of poor law guardians.

269. Boards of guardians in the Metropolis issue precepts to the metropolitan borough councils for the sums required from each parish in the borough to meet the expenses of the boards, in the same way that boards of guardians outside the Metropolis issue precepts to overseers (*m*). The expenses of boards of guardians in the Metropolis include, however, besides expenses incurred by the boards themselves, the amounts required in precepts issued to the boards of guardians by the Local Government Board on behalf of the Metropolitan Common Poor Fund (*n*), and on behalf of the managers of the metropolitan asylums (*o*).

Expenses payable out of general rate.

270. All the expenses of a metropolitan borough council, incurred in the discharge of its own duties, are met out of the general rate (*p*). These expenses and any sums payable as such expenses are divided among the parishes in the borough, if there is more than one, in proportion to the rateable value of the parish, subject to the adjustment of local burdens (*q*). Rateable value for this purpose includes the value of Government property, upon which a contribution in lieu of rates is paid (*r*). Contributions are required from metropolitan borough councils to the fund out of which the expenses of the Central Body established in the Metropolis under the Unemployed Workmen Act, 1905 (*s*), and expenses of distress committees incurred with the consent of the Central Body, are defrayed. These contributions are part of the expenses of a metropolitan borough council, and are paid on the demand of the Central Body in proportion to the rateable value of the borough, but must not in any year exceed the amount produced by a ½*d.* rate on that rateable value (*t*). Expenses incurred by a metropolitan borough

Government Act, 1899 (62 & 63 Vict. c. 14), s. 11 (1); see Metropolitan Police Act, 1912 (2 & 3 Geo. 5, c. 4), s. 1 (b). As to the Receiver, see title POLICE, Vol. XXII., pp. 468, 469.

(*k*) Police Rate Act, 1868 (31 & 32 Vict. c. 67), s. 2; Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 24, 27, 93; see Metropolitan Police Act, 1912 (2 & 3 Geo. 5, c. 4), s. 1 (a); and see title POLICE, Vol. XXII., p. 474.

(*l*) Police Acts, 1890 (53 & 54 Vict. c. 45), s. 19 (4); 1909 (9 Edw. 7, c. 40), s. 2; Metropolitan Police Act, 1912 (2 Geo. 5, c. 4), s. 1; and see title POLICE, Vol. XXII., pp. 474, 475.

(*m*) See p. 53, *ante*; London Government Act, 1899 (62 & 63 Vict. c. 14), s. 11 (1), (2).

(*n*) Metropolitan Poor Act, 1867 (30 & 31 Vict. c. 6), s. 64; Local Government Board Act, 1871 (34 & 35 Vict. c. 70), s. 2; and see title METROPOLIS, Vol. XX., pp. 415, 416.

(*o*) Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 104.

(*p*) London Government Act, 1899 (62 & 63 Vict. c. 14), s. 10 (1), and Schemes made thereunder; and see title METROPOLIS, Vol. XX., pp. 440, 451.

(*q*) London Government Act, 1899 (62 & 63 Vict. c. 14), s. 10 (3).

(*r*) *Ibid.*, s. 34; and see p. 14, *ante*.

(*s*) 5 Edw. 7, c. 18.

(*t*) The limit may be extended to 1*d.* by the Local Government Board

council under any of the adoptive Acts, or under any local or other Act, which does not extend to the whole of any parish in the borough, are levied as an additional item of the general rate over that part of the parish to which the Act in question extends; and, if the Act extends to the whole parish, the expenses are included in the general rate for the parish (*u*).

Making and collection of general rate.

271. The general rate is assessed, made, collected and levied as if it were a poor rate, and in general all enactments applying or referring to the poor rate apply or refer also to the general rate (*v*). But the promoters of an undertaking under the Lands Clauses Consolidation Act, 1845 (*w*), are only liable during the construction of works to make good any deficiency in that part of the rate which represents the poor rate or sums chargeable on it (*x*).

Basis of assessment.

The general rate is assessed upon the rateable value appearing in the valuation list in force when the rate is made (*a*).

Form and allowance.

The general rate is made in a prescribed form and entered in a rate-book, and a prescribed declaration must be signed by the town clerk before the rate is presented to justices for allowance (*b*). Special provisions are made for showing additional items and exemptions (*c*). A clerical or arithmetical error in the rate may be amended upon an application by the person aggrieved to two justices or a police magistrate (*d*), and, if a person is omitted or misdescribed, the error may be corrected on a similar application by the overseers (*e*). When a hereditament becomes rateable in parts, the value shown in the valuation list may be apportioned by the overseers (*f*).

(Unemployed Workmen Act, 1905 (5 Edw. 7, c. 18), s. 1 (6)); and see title METROPOLIS, Vol. XX., p. 413.

(*u*) London Government Act, 1899 (62 & 63 Vict. c. 14), s. 10 (4); London (Rating) Scheme, 1901 (Stat. R. & O., Rev. Vol. VIII., London County, pp. 84 *et seq.*), art. 3; and see title METROPOLIS, Vol. XX., p. 442.

(*v*) London Government Act, 1899 (62 & 63 Vict. c. 14), s. 10 (2); see pp. 1 *et seq.*, *ante*. The London Government Act, 1899 (62 & 63 Vict. c. 14), s. 14, applies, however, to the audit of the general rate accounts; and see title METROPOLIS, Vol. XX., pp. 451, 452. As to the making, allowance etc. of the poor rate, see pp. 45 *et seq.*, *ante*.

(*w*) 8 & 9 Vict. c. 18.

(*x*) Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 133; *Islington Borough Council* v. *London School Board*, [1903] 2 K. B. 354, C. A.

(*a*) See p. 116, *ante*. As to the current rate being affected by a provisional list, see p. 126, *ante*.

(*b*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 73, Sched. IV.; Agricultural Rates Order, 1896, Sched. Y 2; London (Rate Collection) Accounts Order, 1901 (Stat. R. & O., Rev. Vol. VIII., London County, p. 88).

(*c*) London (Rating) Scheme, 1901, arts. 2 (2), 3 (4), p. 88.

(*d*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 71. For notice of application to amend, see Encyclopædia of Forms and Precedents, Vol. XI., p. 259.

(*e*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 72; *Westminster Corporation* v. *Edgcome* (1901), Ryde and Konstam's Rating Appeals, 257; 67 J. P. 25. For form of application, see Encyclopædia of Forms and Precedents, Vol. XI., p. 260.

(*f*) Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 28, proviso.

SECT. 3. Rates Levied in the Metropolis.

The demand note is in one of two prescribed forms, and shows, among other details, the several purposes of the rate, including the equalisation charge, if any, and the amount in the £ required for each (*g*).

Demand note.

Persons assessed.

272. Subject to any special exemptions, the persons rateable are the same as those rateable to the poor rate outside the Metropolis, and the provisions for the rating of owners instead of occupiers apply equally (*h*). But any total or partial exemptions which existed in the Metropolis at the time of the passing of the London Government Act, 1899 (*i*), also apply (*j*). A tenant who was entitled at that time to deduct against his landlord any sum paid on account of sewers rate is still so entitled (*k*).

Appeal against general rate.

273. There is no appeal against the general rate in the Metropolis in respect of matters upon which the valuation list is conclusive (*l*), but upon such grounds as non-occupation (*m*) or total (*n*) or partial (*o*) exemption, or upon the question whether owner or occupier should be rated (*p*), an appeal lies against the general rate to the county quarter sessions, in the same way as an appeal lies against a poor rate outside London, except that objection to the list is not a condition precedent and no notice is given to the assessment committee (*q*). An appeal does not lie against a rate based on a provisional list on the ground that there had been no

(*g*) London Government Act, 1899 (62 & 63 Vict. c. 14), s. 11 (3); London (Rate Collection) Accounts Order, 1901, art. 4, Schedule.

(*h*) London Government Act, 1899 (62 & 63 Vict. c. 14), s. 10 (2); and see pp. 4 *et seq.*, *ante*. As to the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), and the Tithe Rentcharge (Rates) Act, 1899 (62 & 63 Vict. c. 17), see London (Rating) Scheme, 1901, arts. 2 (3), 4.

(*i*) 62 & 63 Vict. c. 14.

(*j*) London Government Act, 1899 (62 & 63 Vict. c. 14), s. 10 (1); London (Rating) Scheme, 1901, arts. 2, 3 (3), 4. Many of these exemptions are created by local Acts, or by orders made by vestries (Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 159; see *London and Brighton Rail. Co.* v. *Lewisham Guardians* (1879), 4 Q. B. D. 389). Certain general exemptions are created by the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), ss. 163—165. Where *ibid.*, s. 163, applies, the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), does not apply; see *ibid.*, s. 1 (2) (a); and, see, further, title METROPOLIS, Vol. XX., p. 441.

(*k*) London Government Act, 1899 (62 & 63 Vict. c. 14), s. 12.

(*l*) Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 45; see pp. 115, 116, *ante*.

(*m*) *Smith* v. *Lambeth Assessment Committee* (1882), 9 Q. B. D. 585; affirmed 10 Q. B. D. 327, C. A.

(*n*) *Savoy Overseers, etc.* v. *Art Union of London*, [1896] A. C. 296; *R.* v. *Institution of Civil Engineers* (1879), 5 Q. B. D. 48; see p. 21, *ante*.

(*o*) *London and India Docks Co.* v. *Woolwich Borough*, [1902] 1 K. B. 750; and see pp. 23, 24, *ante*.

(*p*) *White and Hales* v. *Islington Corporation*, [1909] 1 K. B. 133, C. A.; and see p. 19, *ante*.

(*q*) London Government Act, 1899 (62 & 63 Vict. c. 14), s. 10 (2); see pp. 57, 61, *ante*. The Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1, does not apply to the Metropolis. For the other conditions of an appeal against the poor rate, see pp. 59 *et seq.*, *ante*.

alteration in value which justified the inclusion of the hereditament in that list (*r*).

SUB-SECT. 2.—*The City of London.*

Rating authority.

274. The Mayor and Commonalty and Citizens of the City of London acting through the Common Council are the overseers for the parish of the City of London (*s*).

Poor rate and general rate.

275. As such overseers the Common Council make a poor rate (*t*), which includes, besides certain expenses of the Common Council itself, sums required by the authorities who levy their money by precept, namely, the London County Council and the guardians of the City of London union (*t*); and they also make a separate and distinct general rate (*a*), which includes sums raised for the purposes of the old sewers rate, consolidated rate, police rate (*b*), trophy tax (*c*), and certain miscellaneous expenses. An appeal against the latter rate lies to the quarter sessions for the City of London (*d*).

(*r*) *London County Council* v. *Shoreditch Borough Council* (1911), 75 J. P. 386.

(*s*) City of London (Union of Parishes) Act, 1907 (7 Edw. 7, c. cxl.), ss. 11, 13. As to the area known as "the City of London," see title METROPOLIS, Vol. XX., pp. 400, 401.

(*t*) City of London (Union of Parishes) Act, 1907 (7 Edw. 7, c. cxl.), ss. 11, 12, 18—21; see p. 126, *ante*. See, further, as to the making and purposes of the City "poor rate" and "general rate," title METROPOLIS, Vol. XX., p. 439.

(*a*) City of London (Union of Parishes) Act, 1907 (7 Edw. 7, c. cxl.), ss. 15—17, 19—21. The making etc. of this rate are governed by the provisions of this and earlier local Acts.

(*b*) As to finance relating to the City Police, see title POLICE, Vol. XXII., pp. 480, 481.

(*c*) As to the trophy tax, see titles METROPOLIS, Vol. XX., p. 423, note (*a*); ROYAL FORCES.

(*d*) As to this court, see title MAGISTRATES, Vol. XIX., p. 622. Otherwise the conditions of such an appeal are the same as in the metropolitan boroughs; see p. 130, *ante*. An appeal under the County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 22 (see p. 75, *ante*), on the ground that the total in the valuation list upon which the rate was based included property in the City of London exempted by statute from liability to the county rate, lies to the quarter sessions of the County of London (*R.* v. *London County Justices*; *R.* v. *London City Justices*, [1912] 2 K. B. 556).

RATIFICATION.

See AGENCY; MASTER AND SERVANT.

RATIO DECIDENDI.

See JUDGMENTS AND ORDERS.

RATIONE TENURÆ.

See HIGHWAYS, STREETS, AND BRIDGES.

REAL ACTION.

See ACTION.

REAL PROPERTY AND CHATTELS REAL.

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Part I.—Introduction.

SECT. 1.

SECT. 1.—*The General Nature of Real Estate and Chattels Real.*

SECT. 1. The General Nature of Real Estate and Chattels Real.

276. The term "property" is used to denote either rights in the nature of ownership or the corporeal things, whether lands or goods, which are the subjects of such rights. This dual meaning of the word arises from a natural tendency to identify the corporeal thing with the aggregate of rights which make up the entire right of ownership, including the right of exclusive possession or enjoyment; and it is confined to cases where the right involves possession. Thus, where a person is entitled to land in fee simple in possession, the term "property" is equally appropriate to describe the land itself and his interest in the land, and this usage is extended to limited interests, such as a life estate, in possession. But when the right does not involve possession of a corporeal thing, where, for example, it is an easement or a rentcharge, the term "property" denotes a right only (*a*).

Meaning of "property."

277. The term "real" denotes that the thing itself, or a particular right in the thing, can be specifically recovered (*b*); and since, speaking generally, such specific recovery was originally only allowed in the case of land to which the claimant was entitled for his own or another's life or a greater estate (*c*), the term "real property" denotes, first, land and things attached to land so as to become part of it, and, secondly, rights in the land which endure for a life or are inheritable (*d*), whether these involve full ownership or only some partial enjoyment of the land or its profits (*e*).

Meaning of "real property."

(*a*) This confusion between the thing and the subject of rights and the rights themselves has been frequently commented on; see Austin's Jurisprudence, 4th ed., pp. 371, 804; Williams, Law of Real Property, 21st ed., p. 4; and as to corporeal hereditaments, see, further, p. 160, *post;* but in practice it is not productive of inconvenience.

(*b*) This follows from the division of actions into real and personal, a division which is quite distinct from that between actions *in rem* and actions *in personam;* and see the Law Quarterly Review, Vol. IV., p. 394. As to real actions, see title ACTION, Vol. I., pp. 32 *et seq.*

(*c*) See Pollock and Maitland, History of English Law, Vol. II., p. 179, where it is pointed out that this incident of specific recovery has no actual connection with the nature of the right of property; and see title PERSONAL PROPERTY, Vol. XXII., pp. 387 *et seq.*, 392 *et seq.*, 398. A more substantial distinction is that "things real are such as are permanent, fixed and immoveable, which cannot be carried out of their place, as lands and tenements; things personal are goods, money, and all other moveables, which may attend the owner's person wherever he thinks proper to go" (2 Bl. Com. 16). But this only suits tangible forms of personal property, and not the most important modern forms, such as shares and other choses in action; and see, further, title PERSONAL PROPERTY, Vol. XXII., p. 387, note (*c*).

(*d*) Leasehold interests were not originally specifically recoverable and have long been described as chattels real; see p. 138, *post.*

(*e*) As to the distinction between immovables and movables; see *Re Earnshaw-Wall,* [1894] 3 Ch. 156; see titles CONFLICT OF LAWS, Vol. VI., pp. 196 *et seq.;* DESCENT AND DISTRIBUTION, Vol. XI., p. 3, note (*f*).

SECT. 1. The General Nature of Real Estate and Chattels Real.

Real estate and chattels real.

278. Proprietory rights involving possession of real property in its corporeal sense are called "estates," and these estates are divided into real estate and chattels real. Real estate includes estates in land which are of freehold (*f*) or customary (*g*) tenure, and also any rights in land, such as a rentcharge (*h*), which admit of being limited in the same manner as freehold estates (*i*). The chief result of an interest being classed as real estate is that, unless its duration is restricted to a life or lives, it is capable, apart from the Land Transfer Act, 1897 (*j*), of descending to the heir (*k*). An interest for a term of years is classed as a chattel, and on the death of the termor it goes with his goods and chattels to his personal representatives (*l*); but being carved out of the realty, it is known as a chattel real (*m*).

SECT. 2.—*The Feudal System and Feudal Tenure.*

No absolute ownership in land.

279. Technically, land is not the subject of absolute ownership, but of tenure. According to the doctrine of the common law there is no land in England in the hands of a subject but is held of some lord by some service and for some estate (*n*); and this tenure is either

(*f*) *Bridgewater* (*Countess*) v. *Bolton* (*Duke*) (1704), 6 Mod. Rep. 106.

(*g*) See *Car* v. *Ellison* (1744), 3 Atk. 73, 75; *Reid* v. *Shergold* (1805), 10 Ves. 370, 378; *Torre* v. *Browne* (1855), 5 H. L. Cas. 555, 571; and for the definition of real estate, see p. 162, *post*. The fact that copyholds could formerly not be devised at law without a surrender to the uses of the will led to the rule that "real estate" in a will did not include copyholds in the absence of evidence of intention to include them; see *Car* v. *Ellison*, *supra*. Such evidence was supplied by a surrender to the uses of the will (*Tendril* v. *Smith* (1740), 2 Atk. 85; *Dod* v. *Dod* (1755), Amb. 274; *Torre* v. *Browne*, *supra*); and, without such surrender, an intention was inferred when the testator had copyhold, but no freehold, estate (*Smith* v. *Baker* (1737), 1 Atk. 385; *Ithell* v. *Beane* (1749), 1 Ves. Sen. 215; *Church* v. *Mundy* (1808), 15 Ves. 396); but in the latter case it was further necessary for equity to supply the surrender, and this was only done in favour of a wife, children, or creditors (*Byas* v. *Byas* (1751), 2 Ves. Sen. 164; *Judd* v. *Pratt* (1808), 15 Ves. 390; see *Seaman* v. *Woods* (1857), 24 Beav. 372). The necessity for a surrender to the uses of the will was abolished by stat. (1815) 55 Geo. 3, c. 192, repealed, and in effect re-enacted, by the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), and therefore evidence of intention to devise copyholds, other than the mere use of the term "real estate," became unnecessary (*Doe* d. *Clarke* v. *Ludlam* (1831), 7 Bing. 275; *Torre* v. *Browne*, *supra*, at pp. 573, 574); and copyholds may pass under a devise of freehold and leasehold estates and all other property (*Edwards* v. *Barnes* (1835), 2 Bing. (N. C.) 252; and see, further, title WILLS); or of freehold and personal estate (*Reeves* v. *Baker* (1854), 18 Beav. 372, 382). As to copyholds see title COPYHOLDS, Vol. VIII., pp. 1 *et seq.*; and as to customary freeholds, see *ibid.*, p. 67, and p. 149, *post*.

(*h*) See p. 285, *post*; and see title RENTCHARGES AND ANNUITIES, pp. 466 *et seq.*, *post*.

(*i*) As to shares in companies which are real hereditaments, see p. 162, *post*.

(*j*) 60 & 61 Vict. c. 65; see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 238.

(*k*) See title DESCENT AND DISTRIBUTION, Vol. XI., pp. 4 *et seq.*

(*l*) See p. 164, *post*; title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 230.

(*m*) *Bridgewater* (*Countess*) v. *Bolton* (*Duke*) (1704), 6 Mod. Rep. 106, 107; and see p. 164, *post*.

(*n*) Co. Litt. 65 a, 93 a; 2 Bl. Com. 53; Challis, Law of Real Property, 3rd ed., p. 4. Land owned by a subject, and not held of a lord, is called

under the King directly, or under some mesne lord, or a succession of mesne lords, who, or the last of whom, holds of the King. Thus the King is lord paramount, either mediate or immediate, of all land within the realm (*o*). The tenure of land is based upon the assumption that it was originally granted as a "feud" (*p*) by the King to his immediate tenant on condition of certain services, and, where there has been subinfeudation, that the immediate tenant in turn regranted it (*q*); and although for most purposes this system, known as the "feudal system," has lost its practical importance, it still determines the form of property in land (*r*).

Forms of tenure.

280. Tenure carried with it reciprocal obligations and rights on the part of lord and tenant (*s*). The lord was bound to defend his tenant's title (*t*); the tenant was bound to render to his lord

allodial land (Co. Litt. 1 b; 2 Bl. Com. 47); and a system of allodial ownership appears to have preceded the feudal system in England, the land then owned being termed, according to the mode of acquisition, bookland or folkland (Co. Litt. 65 a, Hargrave's note; Pollock and Maitland, History of English Law, Vol. I., pp. 37 *et seq.*; Digby, History of the Law of Real Property, 5th ed., pp. 11 *et seq.*). Such ownership is assumed to have been—at any rate as to bookland, or land received by grant—absolute ownership, and the term "allodium" is used to denote land owned absolutely. The term survived the institution of the feudal system, and was applied to land held of a lord, so that a man was sometimes said to hold *in allodio*; but the *allodium* and the *beneficium* were then becoming transformed into the *feodum* (Pollock and Maitland, History of English Law, p. 49; Digby, History of the Law of Real Property, 5th ed., p. 26).

(*o*) Co. Litt. 1 a, 65 a; 2 Co. Inst. 501:—"Therefore the King is *summus dominus supra omnes.*" As to the position of the King as the "liege lord" of his subjects, see title CONSTITUTIONAL LAW, Vol. VI., pp. 339 *et seq.*

(*p*) "Feudum," "feodum," "fief," "fee"; these appear to be all forms of the same word; as to their derivation, see Digby, History of the Law of Real Property, 5th ed., p. 31, n.; compare 2 Bl. Com. 45. The hypothesis is that the land was granted by a chieftain to his follower; in Latin as a *beneficium*, in the Teutonic languages as a fief, or fee—Latinised into *feudum, feodum*—or their equivalents. The English terms were feodum and fee (Pollock and Maitland, History of English Law, Vol. I., p. 214, n. (2)). The grant assumed and perpetuated the relation of lord and vassal; and the interest of the donee came to be hereditary. The leading idea in "feud," as used in the expression "feudal system," is that of vassalage; in the form "fee" the hereditary nature of the vassal's interest is most prominent (see Pollock and Maitland, History of English Law, Vol. I., pp. 44 *et seq.*); and as to the theory that the title to all land is derived ultimately from the King, see 2 Bl. Com. 51. The term "feu" is in everyday use in Scotland. Feu is there the prevailing tenure of land, and is now of the nature of a perpetual lease.

(*q*) See Pollock and Maitland, History of English Law, Vol. I., pp. 211, 216.

(*r*) It has been said that the practical consequences of tenure at the present day are (1) escheat (see title DESCENT AND DISTRIBUTION, Vol. XI., pp. 23 *et seq.*); (2) the lord's rights in respect of copyholds (see title COPYHOLDS, Vol. VIII., pp. 22 *et seq.*); (3) the rights of lord and commoners (see title COMMONS AND RIGHTS OF COMMON, Vol. IV., pp. 499 *et seq.*) in respect of waste lands of a manor (Challis, Law of Real Property, 3rd ed., p. 3).

(*s*) Pollock and Maitland, History of English Law, Vol. I., p. 215.

(*t*) *Ibid.*, pp. 281, 287; 2 Bl. Com. 46. As to the position of the Sovereign —"liege lord" of his subjects—as *parens patriæ*, see title CONSTITUTIONAL LAW, Vol. VI., pp. 339, 475.

SECT. 2. The Feudal System and Feudal Tenure.

certain services (*a*). The nature of these services varied according as the tenure was in chivalry or in socage. Tenure in chivalry furnished the basis of the military organisation of the Teutonic races after the fall of the Roman Empire (*b*). Tenure in socage, supplemented by tenure in villenage, provided for the practical requirements of agriculture (*c*). In addition, lands might be granted to the Church, and, if no services were reserved, this was tenure in frankalmoin (*d*).

Tenure in chivalry.

281. The usual form of tenure in chivalry was tenure by knight's service (*e*). The personal relation of lord and tenant was constituted by homage and fealty (*f*), and the essential service was the providing of one or more knights according to the size of the fee (*g*). This service came to be generally commuted for a money payment known as "escuage" or rent (*h*). The tenure imposed upon the tenant the

(*a*) 2 Bl. Com. 54; see the text, *infra*.

(*b*) See 2 Bl. Com. 52.

(*c*) Probably the principle of tenure by military service was recognised in England before the Conquest, but, according to the current view, its definite establishment took place in the reign of William I. (compare 2 Bl. Com. 48), to whom is due the feature which distinguished it from military tenure on the Continent, namely, that the military service of undertenants was due directly to the King, and not to the mesne lord. It flourished during the century succeeding the Conquest, and its various incidents, including relief, wardship, and marriage, became more or less definitely ascertained. But, as a system of military organisation, it had only a short existence. Personal service for forty days in the year, accompanied sometimes with the claim that the service must not be outside the realm, did not supply the King with the kind of army he required. Money payments (see the text, *infra*) to some extent replaced personal service; but from the time of Edward I. neither personal service nor its money equivalent appears to have been available, and the Crown forces had to be raised by other means. As to the speedy decay of feudalism as a military system, see Pollock and Maitland, History of English Law, Vol. I., p. 231. As to the modern relation between the Crown and the Royal Forces, see title CONSTITUTIONAL LAW, Vol. VI., pp. 417 *et seq.*

(*d*) See Littleton's Tenures, ss. 133 *et seq.*; 2 Bl. Com. 101 *et seq.*; Pollock and Maitland, History of English Law, Vol. I., pp. 218 *et seq.*; Digby, History of the Law of Real Property, 5th ed., pp. 38, 138. See as to Church property generally, title ECCLESIASTICAL LAW, Vol. XI., pp. 713 *et seq.*

(*e*) See Pollock and Maitland, History of English Law, Vol. I., p. 230; 2 Bl. Com. 62.

(*f*) See Pollock and Maitland, History of English Law, Vol. I., pp. 227 *et seq.*; and, as to homage, see Co. Litt. 64 a; as to fealty, see *ibid.*, 67 b; and see 2 Bl. Com. 53.

(*g*) 2 Bl. Com. 62. But the knight's fee did not represent any fixed extent of land; as to this, and as to the apportionment of the number of knights as between the King and his tenants in chief, see Pollock and Maitland, History of English Law, Vol. I., pp. 235 *et seq.*; and, as to the introduction and size of knights' fees, Round, Feudal England, pp. 225—236. The definite allotment of military service appears to have been commenced by William I. and to have been complete under Henry II. (Pollock and Maitland, History of English Law, Vol. I., pp. 236, 238). An estate held of the King, consisting of many knights' fees held of the tenant *in capite*, came to be known as an honour or barony. Thence may have arisen the distinction between peers and commoners (Pollock and Maitland, History of English Law, Vol. I., p. 259); and see, further, title PEERAGES AND DIGNITIES, Vol. XXII., p. 264, note (*c*).

(*h*) This was so in the case of tenants not holding directly of the King, and homage, fealty and escuage (or scutage) were a sufficient test of tenure

burdens known as relief and aid, and gave the lord the rights, if the tenant had died leaving an infant heir, of the wardship and marriage of such heir (*i*).

Socage tenure.

282. Homage was not required in socage tenure (*k*), but the tenant did fealty, and usually rendered services such as plough service or the payment of fixed escuage or money rent; and it was essential to this tenure that any services should be certain (*l*). There might be relief payable in money, such as one year's rent, or in kind (*m*), but the lord was not entitled to the rights of marriage or wardship (*n*). The wardship of an infant heir until fourteen years went to his nearest relation to whom the inheritance could not descend (*o*). Services in money or labour, however, were not a necessary incident of socage tenure (*p*).

Tenure in serjeanty.

283. Where the land was held by personal service, the tenant was a "serjeant" (*q*), and his tenure was known as "tenure in serjeanty." This tenure was ordinarily a tenure in chivalry and carried

by knight's service (Littleton's Tenures, s. 103; see Pollock and Maitland, History of English Law, Vol. I., pp. 251, 253, note (1); 2 Bl. Com. 74). Strictly the escuage was due to the immediate lord, but on various occasions, chiefly between 1190 and 1240, it was levied directly by the King (Pollock and Maitland, History of English Law, Vol. I., pp. 232, note (1), 249, 253). This system enabled knights' fees to be cut up into fractional parts in a manner which would have been impossible had the service been really military. To what extent the service of the tenants *in capite* of the King was changed to a money payment seems doubtful. Perhaps the commutation was a matter of special arrangement, and in the absence of arrangement the tenant had to furnish military service or pay a fine for his default (*ibid.*, p. 247). Blackstone declines to recognise tenure by escuage as tenure by knight service, and sees in it, as was indeed the fact, the destruction of the advantages of the feudal constitution, leaving only its hardships (2 Bl. Com. 75).

(*i*) Littleton's Tenures, s. 103; Co. Litt. 76 a. As to relief, *i.e.*, a sum to be paid by the tenant on succeeding to the fee, see Littleton's Tenures, ss. 112, 113; Pollock and Maitland, History of English Law, Vol. I., p. 288. The relief for a knight's fee was 100*s.*; for a barony it was not fixed (*ibid.*, p. 289). As to the origin of reliefs and their connection with heriots, see *ibid.*, p. 293; and as to heriots, see title COPYHOLDS, Vol. VIII., pp. 37 *et seq.* As to aids, see Pollock and Maitland, History of English Law, Vol. I., pp. 299, 330. The recognised "aids" were to ransom the lord, to marry his eldest daughter, and to knight his eldest son; there might also be an aid to assist the lord in paying his own relief. As to wardship and marriage, see Littleton's Tenures, ss. 109, 110, 114, 115; Pollock and Maitland, History of English Law, Vol. I., pp. 299 *et seq.* In the case of tenants in chief there was an additional relief known as "primer seisin" (*ibid.*, p. 292). As to all these incidents of tenure in chivalry, see also 2 Bl. Com. 63 *et seq.*

(*k*) Homage was peculiarly an incident of military tenure, though it was occasionally rendered by socage tenants (Pollock and Maitland, History of English Law, Vol I., p. 286). As to its nature, see Co. Litt. 64 a—67 b.

(*l*) Littleton's Tenures, ss. 117—120.

(*m*) Littleton's Tenures, ss. 126—128; see Pollock and Maitland, History of English Law, Vol. I., p. 289; *Anon.* (1578), Dyer, 362 b (18).

(*n*) See Pollock and Maitland, History of English Law, Vol. I., p. 275; 2 Bl. Com. 80.

(*o*) Littleton's Tenures, s. 123; title INFANTS AND CHILDREN, Vol. XVII., pp. 121, 122.

(*p*) Fealty alone made socage tenure (Littleton's Tenures, ss. 118, 131; and see 2 Bl. Com. 80). For instances of various services incident to tenure, see *Bruerton's Case* (1594), 6 Co. Rep. 1 a, 2 a.

(*q*) Or *serviens*. See Pollock and Maitland, History of English Law, Vol. I., p. 262.

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with it relief (*r*), wardship, and marriage, but the personal nature of the service forbade its commutation for escuage (or scutage). Ultimately, a distinction was drawn between service of an honourable or important nature, which constituted the tenure of "grand serjeanty" (*s*) and existed only under the King immediately, and the tenure known as "petty serjeanty" (*t*), where the service was the rendering of some small matter incident to warfare; but petty serjeanty did not carry wardship or marriage, and was in effect a socage tenure.

Tenures classed as socage.

284. Every freehold tenure which was not in chivalry or in frankalmoin (*u*) came to be classed as socage; and a freehold tenure, where only fealty was due, was of this nature (*a*). Where the main feature of a grant of land on freehold tenure was the payment of a rent in money, the tenant was frequently said to hold in "fee farm," and the rent was called a "fee farm rent," but the tenure was a socage tenure (*b*).

"Fee farm rent."

Subinfeudation.

285. The tenant of land could grant a part of it to be held of himself as lord, and by this process of subinfeudation one or more mesne lordships or seigniories might be established (*c*). Where

(*r*) As to relief, see note (*i*), p. 141, *ante*.

(*s*) As to grand serjeanty, see Littleton's Tenures, ss. 153—158, 161; 2 Bl. Com. 73; title CONSTITUTIONAL LAW, Vol. VI., p. 328.

(*t*) As to petty serjeanty, see Littleton's Tenures, ss. 159—161; 2 Bl. Com. 82; and, as to both grand and petty serjeanty, see Pollock and Maitland, History of English Law, Vol. I., pp. 262 *et seq.*, 315, 336.

(*u*) Land held by ecclesiastics in right of their churches, where no definite service either spiritual or secular was due, was held in free alms, or in frankalmoin; as to this tenure, see Littleton's Tenures, ss. 133—142; 2 Bl. Com. 101; Pollock and Maitland, History of English Law, Vol. I., pp. 240 *et seq.*; p. 140, *ante*.

(*a*) Littleton's Tenures, s. 131. The association of socage tenure with agriculture suggested the old derivation of socage from "soc" (French, ploughshare). More probably it has the same root as "seek," and denotes that the tenant was subject to the jurisdiction of a manor or other local court (compare the use of the words "sac and soc" in grants of private jurisdiction; see Pollock and Maitland, History of English Law, Vol. I., pp. 20, 60; and as to the derivation of "socage," see *ibid.*, p. 274; Digby, History of the Law of Real Property, 5th ed., p. 45, n.). Socage tenure probably existed before the Conquest, and it has been called a relic of Saxon liberty (2 Bl. Com. 81). At the Conquest, many manors—especially manors of ancient demesne (see p. 150, *post*)—had tenants known as sokemen ("*socmanni*"), who were distinct from villeins, and were sometimes divided as free and bond sokemen. But, while the free sokemen may have given their name to tenure in socage, this arose also under other circumstances—by feoffments where fixed rents or services were reserved; by ancient tenure at fixed rents or services where no charter existed; and generally every free holding that was not in chivalry, or serjeanty (see the text, *supra*), or frankalmoin, was classed as socage. Since socage was not liable to uncertain escuage, wardship and marriage, there was doubtless a tendency for it to increase at the expense of military tenure by the gradual conversion into socage of holdings as to which the evidence of military tenure had been lost; see Littleton's Tenures, s. 118; Vinogradoff, Villainage in England, pp. 178—210; Pollock and Maitland, History of English Law, Vol. I., pp. 271—277, 343, Vol. II., p. 268; Holdsworth, History of English Law, Vol. I., pp. 10 *et seq.* With socage tenure were sometimes associated special incidents so as to constitute particular species of this tenure; see p. 148, *post*.

(*b*) Pollock and Maitland, History of English Law, Vol. I., p. 273.

(*c*) See Hallam, State of Europe during the Middle Ages, ch. II., pt. ii.; Pollock and Maitland, History of English Law, Vol. I., p. 295 (where an

there were several free tenants holding under the same lord, the lord, as an incident of this system of tenure, had rights of civil jurisdiction over them; and by special grant from the Crown or by prescription he might have rights of criminal jurisdiction. He might also have villein, or unfree, tenants holding land at his will—afterwards copyholders (*d*) holding at his will according to the custom of the manor—and over these, also, he had jurisdiction (*e*). In addition he might retain lands—his demesne lands—in his own occupation. An estate large enough to have these various incidents —free tenants, villein tenants, demesne lands, and a local court—was known as a manor (*f*).

Manors.

286. Either originally or at an early date the tenant had power to alienate the entirety of his holding so as to substitute the grantee for himself as tenant to the immediate lord (*g*); but, since he could not require the lord to accept an apportionment of the services, he could not alienate in this way a part of his holding (*h*). If he wished to make an effective grant of a part, he could do so only by subinfeudation (*i*). But subinfeudation prejudiced the superior lord in the enjoyment of his feudal dues (*j*), and it was first checked (*k*)

Power of alienation.

instance of eight successive subinfeudations is given). The actual tenant of the land held *in dominico;* the mesne lord *in servitio*. The tenants of the Crown were usually known as tenants *in capite*, but this was in fact a relative term (2 Co. Inst. 501), and each tenant held *in capite* of the lord immediately above him (Pollock and Maitland, History of English Law, Vol. I., p. 212, note (1)).

(*d*) See title COPYHOLDS, Vol. VIII., p. 3.

(*e*) Private jurisdiction was an essential element in feudalism (Pollock and Maitland, History of English Law, Vol. I., pp. 20, 21); and, as to such jurisdiction, see *ibid.*, pp. 558 *et seq.* Originally there was, perhaps, only one court for free and non-free tenants (*ibid.*, p. 581). Subsequently there were two courts—the court baron for the freeholders, and the customary court for the copyholders (Digby, History of the Law of Real Property, 5th ed., pp. 52 *et seq.*); and see titles COPYHOLDS, Vol. VIII., p. 11; COURTS, Vol. IX., p. 216.

(*f*) Pollock and Maitland, History of English Law, Vol. I., pp. 584 *et seq.* But the term was at first indefinite, and a manor did not necessarily require all these incidents (*ibid.*). As to honours and manors, see title COPYHOLDS, Vol. VIII., pp. 1 *et seq.* Except in Ireland and in a few cases in the North of England, honours are practically extinct.

(*g*) Bract. lib. ii., c. 35, fol. 81; Co. Litt. 43 a; see Digby, History of the Law of Real Property, 5th ed., p. 157. Blackstone, however, following Wright (Tenures, 155), perhaps with more regard to theory than history, considers that the fee could not be alienated without the consent of the lord, such an alienation being opposed to the nature of the feudal relation of lord and vassal (2 Bl. Com. 57, 287); see the discussion of the question in Pollock and Maitland, History of English Law, Vol. I., pp. 310 *et seq.* It seems that the lord could, after alienation by the tenant of his holding, still require the services from the original tenant (2 Co. Inst. 500).

(*h*) Co. Litt. 43 a; 2 Co. Inst. 65.

(*i*) See p. 142, *ante*.

(*j*) See p. 144, *post*.

(*k*) By Magna Carta (1217), c. 39, which provided that no freeman should thenceforth "give or sell" more of his land than that, out of the residue, there might sufficiently be done to the lord of the fee the service due to him in respect of the fee; repeated in the Charter (1225), 9 Hen. 3, c. 32, and amended by stat. (1290) 18 Edw. 1 (Quia Emptores), c. 2: see Digby, History of the Law of Real Property, 5th ed., p. 133; Challis, Law of Real Property, 3rd ed., p. 19. The words of the statute are not clear, but it seems to have been aimed at subinfeudation, and not alienation (2 Bl. Com.

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and then entirely abolished by statute, while, on the other hand, the right of alienation by substitution of another as tenant was confirmed and extended to alienation of a part only of the holding (*l*).

Abolition of subinfeudation.

287. The chief cause of damage to lords by subinfeudation was in the loss of the profits of escheats, marriages, and wardships (*m*). The statute Quia Emptores (*n*) recites to this effect, and provides that from thenceforth it should be lawful for every freeman to sell at his will his land or tenement or part thereof, so however that the feoffee should hold the land or tenement of the next superior lord by the same services and customs by which the feoffor previously held them (*o*). Where a part only of the land is sold the services are apportioned according to the value of the land sold (*p*). The statute (*n*) does not authorise the sale of land into mortmain (*q*) contrary to the statutes in that behalf, and applies only to lands held in fee simple (*a*): hence it does not prevent the grant of an estate for life or in tail to be held of the grantor (*b*). But, although the

289). As to a feoffment in breach of the statute, see Co. Litt. 43 a; 2 Co. Inst. 66; it seems that it could be avoided by the heir of the donor and also by the donor's lord (Pollock and Maitland, History of English Law, p. 313; Digby, History of the Law of Real Property, p. 157), and the practical effect of the statute was to enable the lords to exact a fine for licence to assign (Challis, Law of Real Property, 3rd ed., p. 21). In regard to lands held of the King, a prerogative right was asserted and gradually established that the lands could not be alienated without his consent; as to the growth of this right, see Pollock and Maitland, History of English Law, Vol. I., pp. 316 *et seq.*; and see Co. Litt. 43 b.

(*l*) Stat. (1290) 18 Edw. 1, c. 1; see Digby, History of the Law of Real Property, 5th ed., p. 236.

(*m*) Pollock and Maitland, History of English Law, Vol. I., p. 311; Challis, Law of Real Property, 3rd ed., p. 18.

(*n*) Stat. (1290) 18 Edw. 1, c. 1.

(*o*) Stat. (1290) 18 Edw. 1, c. 1. The word "customs" is here synonymous with "services" (2 Co. Inst. 502). The statute rendered unnecessary a licence for alienating from a mesne lord, but did not affect the Crown, and hence the Crown tenants still required a licence. By stat. (1327) 1 Edw. 3, st. 2, c. 12, it was provided that the penalty for alienation without licence should be a reasonable fine and not forfeiture, and such fines continued till stat. (1660) 12 Car. 2, c. 24 (see Pollock and Maitland, History of English Law, Vol. I., p. 318; Co. Litt. 43 b).

(*p*) Stat. (1290) 18 Edw. 1 (Quia Emptores), c. 2. That is, if the services were apportionable; otherwise the services might, according to the circumstances, be due, after alienation, from each tenant or from one only; and in the latter case the one who did the service might be entitled to contribution from the others. As to whether services would be multiplied on alienation of part or not, and as to contribution, see *Bruerton's Case* (1594), 6 Co. Rep. 1 a; *Talbot's (John) Case* (1610), 8 Co. Rep. 104 b. In these respects there was no difference between annual services and occasional services, such as heriots (*Talbot's (John) Case, supra*); and as to the effect of a purchase by the lord of a part of the land in extinguishing the entire services, see *Bruerton's Case, supra; Talbot's (John) Case, supra*. The apportionment of services was according to "quantity," but this referred to value (2 Co. Inst. 503).

(*q*) As to the restriction on alienation in mortmain, see note (*o*), p. 288, *post*.

(*a*) Stat. (1290), 18 Edw. 1 (Quia Emptores), c. 3:—"Et sciendum quod istud statutum locum tenet de terris venditis tenendis in feodo simpliciter tantum"; see Digby, History of the Law of Real Property, 5th ed., p. 237.

(*b*) Consequently, an estate for life or in tail can be granted reserving a rent (Littleton's Tenures, s. 214). If the grant is for life or in tail only, the

statute speaks only of the sale of land, it has been construed as extending to grants of land generally (*c*), and since the year 1290 it has been impossible for a tenant in fee simple to convey his land to a grantee in fee simple so as to create a tenure between himself and the grantee. Any rents or other services incident to tenure, and due from an owner in fee simple to a lord other than the Crown, must have been created before that year (*d*).

Estates of inheritance.

288. Under the feudal system, the grant of a fee conferred an interest which was capable of being inherited (*e*), and this was so distinctive a feature of such grants that the word "fee" came to denote heritability (*f*). The grant might be restricted to the life of the grantee, but, in most cases, the tenant held "in fee," and on his death the land devolved upon his heirs. When the grant was recorded in a charter or deed, the heritability was expressed by making the grant to the donee and his "heirs" (*g*); and the rule came to be established that a reference to "heirs" was necessary to give a heritable fee and that a grant to the donee without such reference gave only an estate for life (*h*). The interest of the grantee, considered in respect of its duration, was known as his estate in the land (*i*).

Escheat and reverter.

An estate in fee was capable of unlimited duration, but if in fact it came to an end by failure of heirs of the donee or his grantee, the land went back to the lord, who was then said to take by escheat (*k*). This was the necessary result of the want of a tenant.

reversion in fee simple remaining in the grantor, the tenure is necessarily of the grantor; but if the remainder in fee is also granted nothing remains in the grantor, and the persons claiming under the grant hold of the superior lord (Littleton's Tenures, s. 215; 2 Co. Inst. 565; *Anon.* (1578), Dyer, 362 b (19); Challis, Law of Real Property, 3rd ed., p. 22 Digby, History of the Law of Real Property, 5th ed., p. 237, note (2)).

(*c*) See 2 Co. Inst. 500:—"*Vendere* is here not only taken for a sale, but for any alienation by gift, feoffment, fine, or otherwise; but sale was the most common assurance."

(*d*) Inasmuch as no fresh mesne tenures can be created since 1290, and existing tenures are from time to time extinguished, "the seigniory of all freehold lands held for a fee simple tends to become concentrated in the Crown" (Challis, Law of Real Property, 3rd ed., p. 22; and as to the effect of the statute, see Digby, History of the Law of Real Property, 5th ed., p. 235). As to the possibility of the creation of manors since the statute, see Challis, Law of Real Property, 3rd ed., p. 21; and see title COPYHOLDS, Vol. VIII., p. 3.

(*e*) See Hallam, State of Europe during the Middle Ages, ch. II., pt. i.; 2 Bl. Com. 56; Pollock and Maitland, History of English Law, Vol. I., p. 295.

(*f*) Pollock and Maitland, History of English Law, Vol. I., p. 213; Digby, History of the Law of Real Property, 5th ed., p. 95.

(*g*) Digby, History of the Law of Real Property, 5th ed., p. 60.

(*h*) Littleton's Tenures, s. 1; Pollock and Maitland, History of English Law, Vol. I., p. 289; and see p. 166, *post*.

(*i*) But this was not till the end of the thirteenth century, when the feudal system was ceasing to serve its original purpose, and interests in land were being made the subject of conveyancing. "Thus were established the first elements of that wonderful calculus of estates which even in our own day is perhaps the most distinctive feature of English private law" (Pollock and Maitland, History of English Law, Vol. II., p. 11).

(*k*) *Ibid.*, Vol. I., p. 332. As to escheat, see title DESCENT AND DISTRIBUTION, Vol. XI., pp. 23 *et seq.*

SECT. 2. The Feudal System and Feudal Tenure.

An estate for life was in its nature limited, and on the death of the donee the land went back to the donor in accordance with the intention of the gift. This was described not as escheat, but as reverter (*l*).

Tenure in villenage.

289. The difference between free and unfree tenures corresponded in the main to differences in status between free men and villeins. Tenures in chivalry and free socage were the tenures of free men, and the tenant had a free holding (*m*). Tenure in villenage was the tenure of an unfree man, though a free man might hold it (*a*). The value of a right depends on the protection which the law gives it, and the proprietary and possessory actions allowed in the King's courts were reserved for freeholders (*b*). The tenant in villenage had originally only such protection as he could obtain in the manorial court, which, however, may have been effective enough as against everyone except the lord (*c*). Ultimately the custom of the manor so confirmed him in his holding that the King's courts allowed an action of trespass against the lord (*d*). The villein tenant had by this time become the copyholder (*e*), and his tenure came to be as well protected as freehold tenure (*f*).

Proprietary and possessory actions reserved for freeholders.

Origin of leasehold tenure.

290. At an early date, leases for terms of years became common (*g*), but they formed no part either of the feudal system, which was based

(*l*) Pollock and Maitland, History of English Law, Vol. I., p. 288; Vol. II., p. 7; see p. 213, *post.*

(*m*) *Liberum tenementum.*

(*a*) Pollock and Maitland, History of English Law, Vol. I., p. 340; Vinogradoff, Villainage in England, pp. 80 *et seq.*; 2 Bl. Com. 90 *et seq.*

(*b*) The proprietary action was commenced by writ of right, and, though in the first instance within the jurisdiction of the manorial court, it might be removed into the King's court. The actions merely possessory were the assize of novel disseisin, introduced in 1166, and the assize of mort d'ancestor, introduced somewhat earlier. These gave a remedy for actual disseisin by the defendant, or for entry by a stranger on the death of the tenant. The writ of entry *sur disseisin* and other writs of entry were introduced for the purpose of extending the possessory remedies for disseisin and of making them available against persons claiming under the disseisor; and they tended to become proprietary without subjecting the claimant to the inconveniences of proprietary procedure. But all these actions, including even the writ of right, were possessory in the sense that the question at issue was not whether the claimant was entitled against all the world, but whether he had better right (*majus jus*) than the defendant. As to these actions, see Pollock and Maitland, History of English Law, Vol. I., pp. 124, 575; Vol. II., pp. 47 *et seq.*; title ACTION, Vol. I., pp. 32 *et seq.*

(*c*) Pollock and Maitland, History of English Law, Vol. I., pp. 342, 576. The assize of novel disseisin was expressly restricted to disseisin of the freehold—the plaintiff complained that the tenant "*injuste et sine judicio disseisivit eum de libero tenemento suo*"; and in Magna Carta of 1217 the words "*de libero tenemento suo*" were inserted apparently for the purpose of affording the remedies for disseisin to freeholders (Pollock and Maitland, History of English Law, Vol. I., p. 340, note (3)).

(*d*) Digby, History of the Law of Real Property, 5th ed., p. 291; Littleton's Tenures, s. 77.

(*e*) See Pollock and Maitland, History of English Law, Vol. I., pp. 351, 357; 2 Bl. Com. 90; and see title COPYHOLDS, Vol. VIII., pp. 5, 82.

(*f*) Coke, Compleat Copy-holder, ss. 8, 9.

(*g*) Apparently, towards the end of the twelfth century (Pollock and Maitland, History of English Law, Vol. II., p. 110).

on military tenure, or of the original agricultural system, which produced socage and villein tenure. They were, perhaps, introduced as a means of raising money (*h*), and they became one of the ordinary means of securing a substantial rent from the land (*i*). But in their legal incidents terms of years differed from other interests in the land. They conferred no freehold (*k*), and they did not entitle the termor to the ordinary possessory remedies, these being only available for freeholders (*l*). The termor's remedy at first was a personal one against the lessor—in covenant, if he was ejected by the lessor; on the warranty, perhaps, if he was ejected by a stranger (*m*). Ultimately the law allowed him the legal advantages of possession. "Seisin," which had been used indifferently for any possession, was confined to the freeholder; "possession" was ascribed to the termor (*n*); and, if the latter was dispossessed, he could recover possession in an action of ejectment (*o*).

Nature of leasehold tenure.

291. The term of years, being thus fully protected, conferred an estate in the land, and the analogy of freehold estate was followed so far that fealty was said to be due from the lessee to the lessor (*p*); hence it became technically correct to speak of leasehold tenure (*q*). But the analogy did not prevail as to devolution on death, and terms of years went to the executor or administrator, and not to the heir (*r*).

SECT. 3.—*Abolition of the Feudal System.*

Conversion of knight service into socage tenure.

292. By the fourteenth century tenure by knight service had ceased to serve its original purpose (*a*), but its casual pecuniary fruits—in particular wardship and marriage, and, as regards

(*h*) For examples of this, see Pollock and Maitland, History of English Law, Vol. II., p. 111.

(*i*) In this respect they were analogous to tenancies at fee farm rents, but these latter were estates of freehold and became merged in socage tenure; see p. 142, *ante*.

(*k*) *I.e.*, *liberum tenementum*; see Bract. lib. ii. c. 9, fol. 27; Pollock and Maitland, History of English Law, Vol. II., p. 112; Digby, History of the Law of Real Property, 5th ed., p. 176.

(*l*) See p. 146, *ante*.

(*m*) Pollock and Maitland, History of English Law, Vol. II., p. 106.

(*n*) *Ibid.*, pp. 36, 109 *et seq.*; and see *ibid.*, p. 114, where it is suggested that the former refusal of possession to the termor was by analogy with the Roman law, which refused *possessio civilis* to the lessee (*conductor*) of land. But the English feeling in favour of the protection of possession was too strong for this refusal to last.

(*o*) As to the evolution of the termor's remedies, see Pollock and Maitland, History of English Law, Vol. II., pp. 106 *et seq.*; Digby, History of the Law of Real Property, 5th ed., p. 176. Ultimately the termor had in the *de ejectione firmæ* the better remedy, and freeholders adopted it by a series of fictions; see p. 325, *post*; and see *Doe* d. *Poole* v. *Errington* (1834), 1 Ad. & El. 750, 755—757: title ACTION, Vol. I., p. 34.

(*p*) Co. Litt. 67 b, 93 b.

(*q*) See Littleton's Tenures, s. 132; Co. Litt. 67 b, 93 b.

(*r*) The reason for this does not seem to have been clearly traced; possibly it was because the action on the covenant, which originally formed the termor's remedy, was a personal remedy; possibly, because the term was purchased for money and represented money; see Pollock and Maitland, History of English Law, Vol. II., p. 116.

(*a*) See Pollock and Maitland, History of English Law, Vol. I., p. 231; and p. 140, *ante*.

SECT. 3. Abolition of the Feudal System.

tenants of the Crown, fines on alienation—kept it alive for some three hundred years longer. In 1541, it was made more oppressive by the establishment of the Court of Wards and Liveries (*b*); but it was abolished by resolution of Parliament in 1645, and the abolition was confirmed by statute in 1656 and more formally in 1660 (*c*). The statute of 1660 (*d*) provided that the Court of Wards and Liveries and the special incidents—wardships (*e*), liveries, primer seisin, and value of marriages—of tenure by knight service, whether held under the King or a mesne lord, and also fines for alienation and homage, should be taken away and discharged; that such tenure should be turned into free and common socage (*f*); and that all future tenures upon the grant by the King of hereditaments for an estate of inheritance should be in free and common socage, and should be discharged from the incidents of tenure by knight service (*g*). The incidents of tenure by knight service which were suitable to socage tenure—fealty, rents certain, heriots, and suit of court—were, however, preserved, and also relief, which was directed to be paid in the same manner as in socage tenure (*h*); and the abolition of fines on alienation only applied to lands held *in capite* of the King, not to fines for alienation due by the custom of particular manors and places (*i*). The statute (*d*) did not interfere with tenure in frankalmoin, or tenure by copy of court roll, and, as regards grand serjeanty, it abolished only wardship, marriage, and other burdens incident to the tenure as a military tenure, and did not take away the honorary services (*k*). Tenure in frankalmoin and tenure by grand serjeanty have, however, ceased to be of practical importance, and the effect of the statute (*d*) is that, apart from leaseholds, all lands are either of socage or of copyhold tenure.

Statutory abolition of knight service.

SECT. 4.—*Special Local Tenures.*

SUB-SECT. 1.—*In General.*

Special local tenures.

293. Tenure in common socage is, in general, subject to uniform rules, recognised by the common law or introduced by statute, as regards alienation, descent, the rights of husband and wife, and other matters; but, without ceasing to be common socage, it is capable of having special incidents attached to it by the custom of particular manors or districts. Hence have arisen the varieties of tenures known as ancient freeholds (*l*), tenure in ancient demesne (*m*),

(*b*) By stat. (1541) 32 Hen. 8, c. 46; see Digby, History of the Law of Real Property, 5th ed., p. 393. For a description of the manner in which the feudal system had become, since the decay of its primary purpose, a means of gross oppression, see 2 Bl. Com. 76.

(*c*) See 2 Bl. Com. 77; Digby, History of the Law of Real Property, 5th ed., p. 394.

(*d*) Stat. (1660), 12 Car. 2, c. 24.

(*e*) See title CONSTITUTIONAL LAW, Vol. VI., p. 475, note (*f*).

(*f*) Stat. (1660) 12 Car. 2, c. 24, ss. 1, 2.

(*g*) *Ibid.*, s. 4.

(*h*) *Ibid.*, s. 5.

(*i*) *Ibid.*, s. 6.

(*k*) *Ibid.*, s. 7; and see title CONSTITUTIONAL LAW, Vol. VI., p. 328, notes (*g*), (*h*).

(*l*) See p. 149, *post*.

(*m*) See title COPYHOLDS, Vol. VIII., pp. 5, 67, 68, and pp. 150, 151, *post*.

gavelkind, and borough-English (*a*). Ancient freeholds must be distinguished from customary freeholds (*b*), which are a form of copyhold tenure.

SUB-SECT. 2.—*Ancient Freeholds.*

Copyholds.

294. In ordinary copyhold tenure, the tenant is expressed to hold at the will of the lord according to the custom of the manor (*c*); his title is evidenced by copy of court roll (*d*); and he alienates his land by surrender to the lord followed by the admittance of the alienee (*e*). The land remains parcel of the manor and the freehold is vested in the lord (*f*).

Privileged copyholds.

In customary freeholds, the tenant is not expressed to hold at the will of the lord, but only according to the custom of the manor (*g*), and the land may be alienable by deed of grant or bargain and sale in addition to or in lieu of surrender (*h*): the title of the alienee, however, is completed by admittance (*i*). In this case, also, though the tenant has an interest analogous to an estate of freehold, his tenure is of the nature of copyhold tenure and the freehold is in the lord (*k*). This tenure has been called "privileged copyhold" (*l*); in the north of England, where it is more common than elsewhere, it is known as "tenant right" (*m*).

(*a*) See pp. 151 *et seq.*, *post.*

(*b*) See title COPYHOLDS, Vol. VIII., p. 67.

(*c*) Littleton's Tenures, s. 73; see title COPYHOLDS, Vol. VIII., pp. 68 *et seq.*

(*d*) Littleton's Tenures, s. 73; Co. Litt. 57 b, 58 a; see title COPYHOLDS, Vol. VIII., pp. 14 *et seq.*

(*e*) Litt., s. 74; *Combes' Case* (1614), 9 Co. Rep. 75 a, 75 b; and see title COPYHOLDS, Vol. VIII., pp. 89 *et seq.*

(*f*) 2 Bl. Com. 97; see title COPYHOLDS, Vol. VIII., p. 67.

(*g*) *Thompson* v. *Hardinge* (1845), 1 C. B. 940; Blackstone, Considerations on Copyholders, Law Tracts, p. 220; title COPYHOLDS, Vol. VIII., p. 67; see *Winchester* (*Bishop*) v. *Knight* (1718), 1 P. Wms. 406.

(*h*) *Doe* d. *Reay* v. *Huntington* (1803), 4 East, 271 (bargain and sale and admittance thereon); *Bingham* v. *Woodgate* (1829), 1 Russ. & M. 32 (bargain and sale, and also surrender and admittance); *Thompson* v. *Hardinge*, *supra* (lease and release and admittance; it was doubted, however, whether there could be a custom to convey by lease and release).

(*i*) See *Doe* d. *Cook* v. *Danvers* (1806), 7 East, 299.

(*k*) *Stephenson* v. *Hill* (1763), 3 Burr. 1278; *Burrell* v. *Dodd* (1803), 3 Bos. & P. 378; *Doe* d. *Reay* v. *Huntington*, *supra*; *Brown* v. *Rawlins* (1806), 7 East, 409; *Thompson* v. *Hardinge*, *supra*; *Delacherois* v. *Delacherois* (1864), 11 H. L. Cas. 62, 83; *Portland* (*Duke*) v. *Hill* (1866), L. R. 2 Eq. 765, 776; *Lingwood* v. *Gyde* (1866), L. R. 2 C. P. 72, 78. Sir E. COKE seems to have regarded such lands as "copyhold of frank tenure" (see Coke, Compleat Copy-holder, s. 32), *i.e.*, of freehold tenure; but this was contested by Blackstone (see Considerations on Copyholders, Law Tracts, p. 220), and in accordance with his argument the view has since prevailed that, while there is a freehold interest in the tenant, he has no freehold tenure (Co. Litt. 59 b, note (1); see *Bingham* v. *Woodgate*, *supra*, at p. 38, where, however, LEACH, M.R., considered that the freehold interest vested the "freehold" in the tenant; but this is opposed to the other modern authorities).

(*l*) See Blackstone, Considerations on Copyholders, Law Tracts, pp. 207, 217 *et seq.* Blackstone treats this, under the name of "villein-socage," as confined to manors of ancient demesne (2 Bl. Com. 98). As to privileged villenage, or villein socage, see Pollock and Maitland, History of English Law, Vol. I.; and see note (*a*), p. 142, *ante*, note (*r*), p. 150, *post.*

(*m*) *Doe* d. *Reay* v. *Huntington*, *supra*, at p. 288; *Brown* v. *Rawlins*, *supra*; see *Stephenson* v. *Hill*, *supra.*

SECT. 4. Special Local Tenures.

Ancient freeholds.

295. Where land held of a manor is subject to customary incidents as regards alienation or otherwise, but the tenure is not expressed to be at the will of the lord, and admittance is not necessary to complete the title of the alienee, the land is usually of freehold tenure, and is known as "ancient freehold" (*n*).

Since the freehold is in the tenant, the seigniory of the land is parcel of the manor, but the land itself is not (*o*). The tenure of land is presumed to be freehold held directly of the King, if there is no evidence to the contrary (*p*).

SUB-SECT. 3.—*Ancient Demesne.*

Tenure in ancient demesne

296. Manors of ancient demesne, that is, manors which belonged to the Crown in the time of Edward the Confessor or William I. (*q*), may include freehold, customary freehold, and copyhold tenants. The freehold tenants are known as tenants in ancient demesne, and formerly they were entitled to certain immunities, and they could only sue and be sued in respect of their tenements by action in the lord's court—the court of ancient demesne—commenced by writ of right close (*r*). But the immunities are

(*n*) *Passingham* v. *Pitty* (1855), 17 C. B. 299 (where the tenants in fee held of the lord "by free deed, fealty, suit of court," and a nominal yearly rent, and could alienate by ordinary assurances without licence or enrolment; but the new owner could be compelled by distress to come in and acknowledge free tenure). For a form of assurance of such freeholds, see Encyclopædia of Forms and Precedents, Vol. XII., p. 795. It is essential to the existence of a manor that there should be at least two freehold tenants to constitute the court baron; see titles COPYHOLDS, Vol. VIII., p. 11; COURTS, Vol. IX., p. 216. As to heriots due from freehold tenants, see title COPYHOLDS, Vol. VIII., p. 39.

(*o*) See Scriven, Law of Copyholds, 4th ed., p. 567, note (*x*).

(*p*) *Busher* v. *Thompson* (1846), 4 C. B. 48.

(*q*) 2 Co. Inst. 542; 4 Co. Inst. 269; *Hunt* v. *Burn* (1701), 1 Salk. 57. The evidence of Domesday Book is both necessary and conclusive to prove that a manor is ancient demesne, but whether particular land is parcel of such a manor is a matter for ordinary evidence (Scriven, Law of Copyholds, 7th ed., pp. 35, 36, 479). Customary freeholds have been said to exist most usually in manors of ancient demesne (Coke, Compleat Copy-holder, s. 22).

(*r*) In a sense all the tenants of a manor of ancient demesne, freehold, customary, and copyhold, are tenants in ancient demesne (Scriven, Law of Copyholds, 7th ed., p. 38). But the term is confined to socage tenants, and hence it does not include mere copyholders (4 Co. Inst. 269). In early times ancient demesne manors appear to have included both free and unfree socage tenants as well as villein tenants (Pollock and Maitland, History of English Law, Vol. I., p. 373), and the unfree socage tenants, or villein sokemen, who were *glebæ adscriptitii* in the sense that they could not be removed from the land at the lord's will, and who did villein, though fixed, services, would seem to be forerunners of the customary freeholders of a later day. The term "tenant in ancient demesne" perhaps includes both freeholders and customary freeholders, but the current tendency is to restrict it to freeholders (Real Property Commissioners' Third Report, p. 12; Challis, Law of Real Property, 3rd ed., p. 32). The essential feature in tenancy in ancient demesne was that suits respecting the tenements so held could only be brought and defended in the manor court; the suit was commenced by little writ of right close directed to the lord or bailiff of the manor (Fitz. Nat. Brev., p. 11); and if the action was commenced in the King's court it was a good defence that the land was held in ancient demesne. Originally this process was available for the privileged villein tenants (Bract. lib. i., fol. 7; Pollock and Maitland, History of English Law, Vol. I.,

obsolete (*s*), and this local procedure has been abolished (*t*). Consequently tenure in ancient demesne has ceased to be of practical importance, though in ancient demesne manors, as elsewhere, it may still be necessary to distinguish between freeholds and customary freeholds or privileged copyholds, and to ascertain the customs affecting either kind of holding.

SUB-SECT. 4.—*The Customs of Gavelkind and Borough-English.*

Custom of gavelkind.

297. The term "gavelkind" is not, properly speaking, the name of a tenure, but it denotes certain special customs which affect lands of socage tenure in Kent and elsewhere (*a*). The chief of

p. 372); subsequently it was available for sokemen of free tenure, but not for sokemen of base tenure who held at the will of the lord (*Anon.* (1413), Y. B. 14 Hen. 4, fol. 34); and the rule became settled that the writ of right close was for tenants in ancient demesne who held by charter in fee simple, or in fee tail, or for life, or in dower, but not for tenants who held in ancient demesne by copy of court roll at the will of the lord (Fitz. Nat. Brev., pp. 11 F, 12 B). But between these two lie the villein sokemen—afterwards the customary freeholders—and it does not appear how they lost the use of the little writ. Blackstone assumed that they had it, and treated this as a distinguishing mark of customary freeholds (Considerations on Copyholds, Law Tracts, p. 231). But if their tenure was really copyhold, they were within the jurisdiction of the King's courts (*Smith* v. *Frampton* (1694), 3 Lev. 405; *Brittel* v. *Bade* (1695), 1 Ld. Raym. 43), and possibly on this ground their right to sue and be sued by the little writ was lost. Moreover, the effect of an ancient demesne tenant suing in the King's courts was to make the land "frank fee," that is, to discharge it from the incidents of tenure in ancient demesne (Jacob, Law Dictionary, *sub voce*), and cause it to be held in free and common socage, and this is intelligible as to tenements which were already freehold in their nature, but not as to tenements which were copyhold, though privileged copyhold. Hence in later times the writ of right close was probably restricted to freehold tenants. In addition to freeholders holding by the tenure of ancient demesne, there might be tenants of an ancient demesne manor holding in frank fee, and, in the case just put of a tenant in ancient demesne being party to an action with respect to his tenement in the King's court, he simply passed from one class of tenants to the other. The most usual case of land being thus turned into frank fee seems to have been when the tenant in ancient demesne levied a fine or suffered a recovery in the Court of Common Pleas, but the lord could restore the original tenure by writ of disceit. In *Merttens* v. *Hill*, [1901] 1 Ch. 842, COZENS-HARDY, J., at p. 853, following the Real Property Commissioners' Third Report, p. 12, treated the use of the writ of right close as a mark of free tenure. This would be so in later times, but not in the earliest times. In *Merttens* v. *Hill, supra*, the tenants in question represented sokemen mentioned in Domesday Book, who were called free tenants in very early documents, so that the matter did not rest on the use of the writ. As to courts of ancient demesne, see title COURTS, Vol. IX., p. 217.

(*s*) As to these, see 4 Co. Inst. 269; Scriven, Law of Copyholds, 7th ed., p. 39.

(*t*) The writ of right close and writ of disceit were abolished with most other real actions by the Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 36; see title ACTION, Vol. I., p. 33. Since the lord thus lost his remedy for restoring the tenure of ancient demesne where it had been turned into frank fee, the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 4—6, preserved the tenure notwithstanding any fine levied or recovery suffered.

(*a*) See Challis, Law of Real Property, 3rd ed., p. 14. It is a species of socage tenure modified by the custom of the country (2 Bl. Com. 85). "Gavelkind"—according to Sir E. COKE'S simple mode of etymology, "gave all kinde; for the custome giveth to all the sonnes alike" (Co. Litt.

SECT. 4. Special Local Tenures.

these customs relates to descent. On the death of the owner intestate, primogeniture is excluded, and there is equal division of descendible estates among all the sons or other male heirs (*b*). Other customs still existing are as follows:—(1) tenancy by the curtesy is in one-half the lands, does not depend on birth of heritable issue, and ceases on remarriage (*c*); (2) dower is in one-half the lands and continues while the widow remains chaste and unmarried (*d*); and (3) an infant can alienate his land by feoffment after attaining fifteen years (*e*), but it is necessary to show that he received full consideration, and he must make the feoffment in person.

Presumption of gavelkind.

298. It is presumed that all land in Kent is subject to the custom of gavelkind unless the contrary is proved (*f*): hence in

140 a)—is derived from *gafol* (rent), and meant originally rent-paying land (Pollock and Maitland, History of English Law, Vol. II., pp. 269 *et seq.*; Robinson, Gavelkind, 5th ed., pp. 1 *et seq.*; Digby, History of the Law of Real Property, 5th ed., p. 47, note (2)). Before the Conquest the equal partibility of land among sons was the general custom of the realm, and at first continued as to socage lands after the Conquest (*Clement* v. *Scudamore* (1704), 6 Mod. Rep. 120; Robinson, Gavelkind, 5th ed., p. 16). Primogeniture was introduced to suit the supposed necessities of military tenure (Robinson, Gavelkind, 5th ed., p. 17), and, save in Kent and certain other places, socage lands became subject to this rule; but in Kent the original custom survived (2 Bl. Com. 84). The custom of gavelkind does not apply to land purchased by the Crown (Co. Litt. 15 b; *Willion* v. *Berkley* (1562), Plowd. 223, 227, 247). In Kent the term "frank fee" has been applied to freehold lands not subject to gavelkind (Robinson, Gavelkind, 5th ed., p. 49). As to the effect of purchase of freehold land by the lord, see *ibid.*, p. 64.

(*b*) Littleton's Tenures, ss. 210, 265. Sir E. COKE, antedating the introduction of military tenure into England, speaks of knight's fees as descending in King Alfred's time to the eldest son; though socage fee was divided between the heirs male (Co. Litt. 14 a); and as to descent in gavelkind, see title DESCENT AND DISTRIBUTION, Vol. XI., p. 15. As to the descent of estates in reversion or remainder, see Robinson, Gavelkind, 5th ed., p. 79.

(*c*) See p. 183, *post*.

(*d*) See p. 190, *post*.

(*e*) See title INFANTS AND CHILDREN, Vol. XVII., pp. 80, 81. Other customs were that the land was not forfeited for capital felony, but passed on the execution of the father to the son—commemorated in the rhyme "the father to the bough, the son to the plough"—and that it was devisable by will; see Robinson, Gavelkind, 5th ed., pp. 41, 176, 185; 2 Bl. Com. 84. The former custom has been rendered obsolete by the general abolition of forfeiture for felony (Forfeiture Act, 1870 (33 & 34 Vict. c. 23); see title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 428 *et seq.*), and the latter has been obsolete since lands generally became devisable under stat. (1539) 32 Hen. 8, c. 1, explained and amended by stat. (1542–3) 34 & 35 Hen. 8, c. 5 (now repealed), though the statutes themselves did not abolish the custom (Co. Litt. 111 b., 115 a). There was also a special procedure known as gavelet, corresponding to the writ of cessavit, for recovering the land on default in render of services (Robinson, Gavelkind, 5th ed., p. 193). Under general statutory provisions authorising exchange of lands gavelkind land may be exchanged for land held in common socage (*Minet* v. *Leman* (1855), 7 De G. M. & G. 340, C. A.).

(*f*) *Wiseman* v. *Cotten* (1663), 1 Sid. 135, 138; *Burridge* v. *Sussex* (*Earl*) (1709), 2 Ld. Raym. 1292. "The customs of gavelkind differ from the customs of a particular fee; to say on evidence lands are in Kent puts the other side to prove they are not departible, but in particular fees the party must plead that the lands within that fee are time out of mind gavelkind *partibilia* and *partita*" (*Randall* v. *Writtall* (1673), 3 Keb. 214, *per* HALES,

pleading it is sufficient to allege that the lands are in Kent and are subject to that custom; it is not necessary to prove the existence of the custom, or that the particular lands have ever been in fact divided according to the custom (*g*).

As to lands elsewhere, which are alleged to be subject to the custom, proof of the allegation must be given (*h*).

Judicial recognition of gavelkind.

299. Moreover, the custom of gavelkind differs from special customs in that it is not necessary to allege and prove the nature of the custom as regards descent (*i*). This is a matter of law (*k*). The incidental customs relating to curtesy, dower, and alienation should be specially alleged (*l*), but in Kent do not require to be proved (*m*), though they would require to be proved if alleged to be incident to gavelkind land elsewhere (*n*).

Disgavelling statutes.

300. There have been various statutes disgavelling particular lands in Kent (*o*); but these operate only as to the mode of descent, and not as to the other incidents of gavelkind (*p*). It is difficult, however, to identify the lands comprised in the statutes, and hence the disgavelled lands tend to fall within the custom again (*q*). When gavelkind lands pass into the ownership of the Crown the custom is suspended, not extinguished, and revives if they are

C.J., at p. 216; *Gouge* v. *Woodwin* (1734), Robinson, Gavelkind, 5th ed., p. 44); "the custom of gavelkind [is] in fact the common law of the land in Kent" (*Re Chenoweth, Ward* v. *Dwelley*, [1902] 2 Ch. 488, *per* FARWELL, J., at p. 494).

(*g*) Littleton's Tenures, s. 265; Co. Litt. 175 b; *Browne* v. *Brokes* (1659), 2 Sid. 153; *Humfry* v. *Bathurst* (1684), Lut. 740, 754, 755.

(*h*) "In no county of England lands at this day be of the nature of gavelkind of common right, saving in Kent only" (Co. Litt. 140 a). It has been said that the custom can only exist in a city or borough or in a manor (Co. Litt. 110 b; and see *ibid.*, note (2)). As to places where it has been proved or said to exist, see Robinson, Gavelkind, 5th ed., pp. 33 *et seq.*; *Tannworth* v. *Tannworth* (1589), Gouldsb. 105.

(*i*) "If a man say that the lands in such a manor or parish are of the nature of gavelkind or borough-English, the law takes notice of it as a general custom" (*Payne* v. *Barker* (1662), O. Bridg. 18, 30; *Clements* v. *Scudamore* (1704), 6 Mod. Rep. 120 (borough-English); *Rider* v. *Wood* (1855), 1 K. & J. 644 (borough-English); see title CUSTOM AND USAGES, Vol. X., p. 237, note (*h*).

(*k*) *Re Chenoweth, Ward* v. *Dwelley, supra.* In regard to special customs generally, which vary the common law, the custom applies no further than it is strictly proved (*Muggleton* v. *Barnett* (1857), 2 H. & N. 653, Ex. Ch.; and see title CUSTOM AND USAGES, Vol. X., pp. 236 *et seq.*). As to special customs of descent in manors, see title COPYHOLDS, Vol. VIII., pp. 86 *et seq.*; *Locke* v. *Colman* (1837), 2 My. & Cr. 635.

(*l*) *Launder* v. *Brooks* (1639), Cro. Car. 561; *Browne* v. *Brokes* (1659), 2 Sid. 153; *Wiseman* v. *Cotten* (1663), 1 Sid. 135; Co. Litt. 175 b, note (4).

(*m*) See Robinson, Gavelkind, 5th ed., pp. 8 *et seq.*

(*n*) *Ibid.*, p. 10.

(*o*) Gavelkind did not attach to lands held by military tenure (*George* v. *Woodwin* (1734), Robinson, Gavelkind, 5th ed., p. 44; 2 Co. Inst. 595), but lands in Kent were presumed to be of socage tenure till the contrary was proved; see *Doe* d. *Lushington* v. *Llandaff* (*Bishop*) (1807), 2 Bos. & P. (N. R.) 491. As to when a grant by the Crown created tenure by knight service, see *Wheeler's Case* (1601), 6 Co. Rep. 6 b; *Lowe's* (*Anthony*) *Case* (1609), 9 Co. Rep. 122 b. As to tenure by knight service, see p. 140, *ante*.

(*p*) *Wiseman* v. *Cotten, supra.* For the disgavelling Acts and their effect, see Robinson, Gavelkind, 5th ed., p. 67; Co. Litt. 140 b.

(*q*) See *Wiseman* v. *Cotten, supra*, note *ad finem*, at p. 138.

SECT. 4. Special Local Tenures.

regranted to a subject (*r*). Gavelkind cannot be extinguished by prescription (*s*), nor can the owner alter the course of descent (*t*). But if, under a limitation to the "right heirs" of a man, the right heirs take by purchase, the term is construed to mean the heirs at common law (*a*).

Interests subject to gavelkind.

301. The custom of gavelkind attaches not only to estates in fee, but also to estates in tail (*b*) and to other estates of a descendible nature (*c*); and it is not restricted to common law estates in land of which the owner is actually seised: it applies to every legal interest in the land, such as a contingent remainder (*d*) which can be claimed by an heir (*e*); to estates arising under the Statute of Uses (*f*); to estates arising in equity, such as trusts and equities of redemption, since in such matters equity follows the law (*g*); and

(*r*) *Wiseman* v. *Cotten* (1663), 1 Sid. 135, 138. Similarly, before the abolition of military tenures, upon gavelkind land escheating to a lord holding in chivalry, the gavelkind custom was suspended only, and not destroyed (*ibid.*). But the Crown on regranting lands cannot create the custom of gavelkind; see *May and Bannister* v. *Street* (1588), Cro. Eliz. 120, as to burgage tenure.

(*s*) Robinson, Gavelkind, 5th ed., p. 54.

(*t*) Thus, when a fine of ancient demesne lands levied in the Common Pleas turned the tenure into frank fee (see p. 151, *ante*), this did not, if the lands were gavelkind, get rid of the custom (*Anon.* (1549), Dyer, 72 b (4)); and if the tenure of socage lands was changed to military tenure, this also did not affect the custom (*Dickson's Case* (1627), Het. 64, 65; *Doe* d. *Lushington* v. *Llandaff* (*Bishop*) (1807), 2 Bos. & P. (N. R.) 491).

(*a*) *Counden* v. *Clerke* (1619), Hob. 29, 31; *Doe* d. *Long* v. *Laming* (1760), 2 Burr. 1100, 1106; Robinson, Gavelkind, 5th ed., p. 101; and see title DESCENT AND DISTRIBUTION, Vol. XI., p. 15. In general "right heirs" are words of limitation (Co. Litt. 22 b; see pp. 165, 227, *post*).

(*b*) Littleton's Tenures, s. 265; Co. Litt. 10 a, Hargrave's note (3); see *May* v. *Milton* (1556), Dyer, 133 b (5); *Roe* d. *Clemett* v. *Briggs* (1812), 16 East, 406; Robinson, Gavelkind, 5th ed., p. 94. The owner cannot create an estate tail to go to the eldest issue by expressly limiting it to heirs male of his body according to the common law (*Anon.* (1560), Dyer, 179 b (45)). But a custom in borough-English lands (see p. 155, *post*) for estates in fee to go to the youngest son, and estates tail according to the common law, is good (*Chapman* v. *Chapman* (1639), March, 54); and see *Roe* d. *Airtrop* v. *Airtrop* (1779), 2 Wm. Bl. 1228.

(*c*) Such as a lease for lives (*Baxter* v. *Doudswell* (1675), 2 Lev. 138; *Clements* v. *Scudamore* (1704), 2 Ld. Raym. 1024, *per* HOLT, C.J., at p. 1028).

(*d*) *Rider* v. *Wood* (1855), 1 K. & J. 644; Williams, Seisin of the Freehold, p. 94.

(*e*) *Payne* v. *Barker* (1662), O. Bridg. 18, 30. *Contra*, as to land taken under an executory devise (*Mallinson* v. *Siddle* (1870), 39 L. J. (CH.) 427).

(*f*) See Co. Litt. 23 a; compare *Randall* v. *Writtall* (1673), 3 Keb. 214, 215, referring to *Chudleigh's Case* (1595), 1 Co. Rep. 120 a.

(*g*) *Banks* v. *Sutton* (1733), 2 P. Wms. 700, 713; *Fawcet* v. *Lowther* (1751), 2 Ves. Sen. 300, 303; see *Cowper* v. *Cowper* (*Earl*) (1734), 2 P. Wms. 720, 736; *Buchanan* v. *Harrison* (1861), 1 John. & H. 662, 676; Co. Litt. 13 a; title EQUITY, Vol. XIII., p. 93. A right of entry for condition broken formerly devolved upon the heir at common law (*Arundel's* (*Earl*) *Case* (1575), Dyer, 342 b, 343 b); but if the breach was by the eldest son himself, this might be avoided by construing the condition as a limitation to the eldest son till breach, and then the land would pass by descent to the heirs in gavelkind or borough-English (*Anon.* (1572), Dyer, 316 b (5); *Boraston's Case* (1587), 3 Co. Rep. 19 a, 21 a; Robinson, Gavelkind, 5th ed., p. 108); but a right of entry on gavelkind or borough-English lands now devolves as "land" (Inheritance Act, 1833 (3 & 4 Will. 4, c. 106), s. 1); and see title DESCENT AND DISTRIBUTION, Vol. XI., pp. 7 *et seq.*

also to rents created out of gavelkind lands (*h*). Where a lease includes lands held in common socage and gavelkind lands, on the descent of the lands the rent and conditions can be apportioned (*i*).

Partition.

302. The heirs in gavelkind are entitled to the remedies of co-owners for partition or sale of the lands (*k*). In this respect they stand on the same footing as co-parceners at common law.

Borough-English.

303. Borough-English is a custom whereby the youngest son inherits to the exclusion of his elder brothers (*l*). It resembles gavelkind in that it affects lands held in socage. It was sometimes associated with burgage tenure—that is, the tenure by which the inhabitants of certain ancient boroughs held their tenements of the King, or some other lord, by a fixed annual rent (*m*)—but the custom was not confined to boroughs; it was (*n*) and still is found in rural manors (*o*) The law takes notice of the nature of the custom so far as regards descent on the youngest son (*p*), and generally the same considerations apply to borough-English as to gavelkind (*q*); but any extensions of the custom to other relatives, or any incidental customs, must be proved.

SECT. 5.—*The Subject-matter of Tenures.*

Lands, seigniories, and honours.

304. The word "tenure" denotes the holding of land by a tenant under his lord, and is only appropriate where the feudal relation of lord and tenant can exist (*r*). Thus the subject-matter

(*h*) *Payne* v. *Barker* (1662), O. Bridg. 18, 30; *Randall* v. *Writtall* (1673), 3 Keb. 214, 216; S. C., *sub nom. Randall* v. *Jenkins*, 1 Mod. Rep. 96; *Stokes* v. *Verryer* (1674), 3 Keb. 292; *Clements* v. *Scudamore* (1704), 2 Ld. Raym. 1024, *per* HOLT, C.J., at p. 1028; Robinson, Gavelkind, 5th ed., p. 84. As to rights of common and tithes affecting gavelkind lands, see *ibid.*, pp. 86, 87.

(*i*) Co. Litt. 215 a; *Dumpor's Case* (1603), 4 Co. Rep. 119 b, 120 b.

(*k*) See title PARTITION, Vol. XXI., pp. 809 *et seq.*

(*l*) Littleton's Tenures, ss. 165, 211.

(*m*) *Ibid.*, ss. 162—164; *Reve* v. *Malster* (1636), Cro. Car. 410. As to burgage tenure and its connection with the growth of boroughs, see Pollock and Maitland, History of English Law, Vol. I., pp. 275, 629. "Regarded merely as a tenure, the chief characteristic of burgage is its subjection to local custom. Other free tenures, socage for example, may be affected by local custom, but what is exceptional in their case is normal in the case of burgage" (*ibid.*, p. 276). The term has been attributed to the fact that the custom is exclusively English (Co. Litt. 110 b), but it has been suggested that it came from Nottingham, where there were French and English boroughs side by side, and to have arisen from the necessity of distinguishing the customs of the English borough, which included the custom in question, from those of the French borough. Hence the custom was called "borough-English" (Pollock and Maitland, History of English Law, Vol. I., p. 631; Robinson, Gavelkind, 5th ed., p. 230).

(*n*) *Ibid.*, p. 632.

(*o*) As to where the custom prevails, see Robinson, Gavelkind, 5th ed., pp. 238 *et seq.* It is said to prevail in Leicester, Derby, Stafford, and Gloucester, and at Kendal (*Johnson* v. *Clark*, [1908] 1 Ch. 303), but to be extinct in Nottingham.

(*p*) Co. Litt. 175 b.

(*q*) *Clements* v. *Scudamore, supra*; and see pp. 151 *et seq.*, *ante*.

(*r*) Co. Litt. 1 a; *A.-G. of Ontario* v. *Mercer* (1883), 8 App. Cas. 767, 772, P. C.

SECT. 5. The Subject-matter of Tenures.

of tenure is primarily land in the physical sense (*s*). Where by subinfeudation, prior to the statute Quia Emptores (*t*), the tenant became a mesne lord, he retained the seigniory of the land, and this became, as between him and his lord, the subject of tenure in lieu of the land (*u*). The seigniory was usually identical with the lordship of a manor, and when it existed over a number of manors was known as a land barony or honour (*a*). Thus tenure exists in land, seigniories, and territorial honours; and also in advowsons in gross (*b*), because, apparently, the advowson is in lieu of the land on which the church is built (*c*). But other incorporeal interests in land, such as rentcharges and easements, though they may fall within the extended meaning which has been given to tenements (*d*), are not the subject-matter of tenure (*e*).

SECT. 6.—*Definitions.*

SUB-SECT. 1.—*Land.*

Meaning of "land."

305. The term "land," in its legal signification, includes any ground, soil, or earth, such as meadows, pastures, woods, moors, waters, marshes, and heath; houses and other buildings upon it; the air above it; and all mines and minerals beneath it (*f*). A grant of all the profits of land passes the whole land—herbage, trees, mines, and whatever is parcel of the land; but a grant of a particular profit of or right in the land does not extend beyond such

(*s*) Where a statute refers to "property of whatsoever nature, tenure, or kind," the word "tenure" shows that realty is included (*Wilson* v. *Hood* (1864), 3 H. & C. 148, decided on the Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28).

(*t*) (1290), 18 Edw. 1, c. 1; see p. 144, *ante*.

(*u*) See p. 142, *ante*.

(*a*) See Madox, Baronia Anglica (published in 1741), pp. 5 *et seq.* A barony in this sense is annexed to the land. As to titles of honour, see title PEERAGES AND DIGNITIES, Vol. XXII., pp. 261 *et seq.*

(*b*) Co. Litt. 85 a, where an advowson is treated as capable of being held by knight service.

(*c*) See Challis, Law of Real Property, 3rd ed., p. 42, n.; and see title ECCLESIASTICAL LAW, Vol. XI., p. 564.

(*d*) See pp. 157 *et seq.*, *post*.

(*e*) See Co. Litt. 19 b, 20 a. Thus, apart from the Intestates Estates Act, 1884 (47 & 48 Vict. c. 71), they are not subject to escheat, which is incident only to tenure; see title DESCENT AND DISTRIBUTION, Vol. XI., p. 24, note (*e*); Challis, Law of Real Property, pp. 38 *et seq.* As to easements generally, see title EASEMENTS AND PROFITS À PRENDRE, Vol. XI., pp. 233 *et seq.*

(*f*) Co. Litt. 4 a; 2 Bl. Com. 18; and see title LANDLORD AND TENANT, Vol. XVIII., pp. 411, 412. "Land" appears to have been originally restricted to arable land (Co. Litt. 4 a; Shep. Touch. (ed. Preston) 91; Pollock and Maitland, History of English Law, Vol. II., p. 147). The extent of its legal signification has usually been expressed in the maxim *cujus est solum, ejus est usque ad cœlum*; but the strict right of property does not extend skyward without limit so as to entitle the owner to sue in trespass (*Pickering* v. *Rudd* (1815), 4 Camp. 219), and the advent of airships has shown that this would be impracticable. The extent of the right of ownership seems to be limited by the power of control—that is, ownership cannot extend beyond possible possession; and probably the ownership is limited to the air space required for the erection of buildings; see 56 Sol. Jo., p. 730; and see titles STREET AND AERIAL TRAFFIC; TRESPASS.

profit or right (*g*). For the purposes of ownership, land may be divided horizontally as well as vertically, and either below or above the ground. Thus separate ownership may exist in strata of minerals (*h*), in the space occupied by a tunnel (*i*), or in different storeys of a building (*k*).

Statutory definition of "land."

306. The meaning of "land" may be extended for the purpose of a particular instrument when this is required by the context (*l*); and it is extended for the purpose of statutes. In statutes generally, passed after 1850, unless the contrary intention appears, it includes messuages, tenements, and hereditaments, houses and buildings of any tenure (*m*). In the Lands Clauses Consolidation Act, 1845 (*n*), it includes messuages, lands, tenements, and hereditaments of any tenure; in the Conveyancing and Law of Property Act, 1881 (*o*), it includes land of any tenure, and tenements, hereditaments, corporeal and incorporeal, and houses and other buildings, also an undivided share of land; in the Settled Land Act, 1882 (*p*), it includes incorporeal hereditaments, also an undivided share of land; and in the Mortmain and Charitable Uses Acts, 1888 and 1891 (*q*), it includes tenements and hereditaments, corporeal and incorporeal, of whatsoever tenure, and any estate and interest in land, but not money secured on land or other personal estate arising from or connected with land. Thus, under statutory definitions, the word "land" is usually extended to include not only land in the physical sense, with all that is above it or underneath it, but also all rights in the land (*r*).

SUB-SECT. 2.—*Tenements.*

Meaning of "tenement."

307. The word "tenement" is not restricted to lands and other matters which are the subject of tenure. Everything in which a

(*g*) Co. Litt. 4 b.

(*h*) See title MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 506 *et seq.*

(*i*) See *Bevan* v. *London Portland Cement Co.* (1892), 67 L. T. 615; *Metropolitan Rail. Co.* v. *Fowler*, [1893] A. C. 416; *Central London Railway* v. *City of London Land Tax Commissioners*, [1911] 2 Ch. 467, C. A.; compare title EASEMENTS AND PROFITS À PRENDRE, Vol. XI., p. 243.

(*k*) *Doe* d. *Freeland* v. *Burt* (1787), 1 Term Rep. 701. A room projecting over neighbouring premises will, according to circumstances, carry (*Corbett* v. *Hill* (1870), L. R. 9 Eq. 671) or not carry the ownership of the column of air above (*Laybourn* v. *Gridley*, [1892] 2 Ch. 53; see *Re Metropolitan District Rail. Co. and Cosh* (1880), 13 Ch. D. 607, 612, 620, C. A.).

(*l*) See title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 437.

(*m*) Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3.

(*n*) 8 & 9 Vict. c. 18; see *ibid.*, s. 3.

(*o*) 44 & 45 Vict. c. 41; see *ibid.*, s. 2 (ii.).

(*p*) 45 & 46 Vict. c. 38; see *ibid.*, s. 2 (10) (i.).

(*q*) 51 & 52 Vict. c. 42 (see *ibid.*, s. 10); 54 & 55 Vict. c. 73 (see *ibid.*, s. 3); and see *Re Hume, Forbes* v. *Hume*, [1895] 1 Ch. 422, C. A.

(*r*) As to the phrase "interest in land" in the Statute of Frauds (29 Car. 2, c. 3), s. 4, see titles AGRICULTURE, Vol. I., p. 293 (growing crops); BUILDING CONTRACTS, ENGINEERS, AND ARCHITECTS, Vol. III., pp. 171, 172 (building contracts); COMPANIES, Vol. V., p. 353 (debentures); COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., p. 33; GAME, Vol. XV., pp. 219, 220 (agreement for shooting rights); LANDLORD AND TENANT, Vol. XVIII., pp. 372, 426; MORTGAGE, Vol. XXI., p. 74 (equitable mortgage); SALE OF LAND; *Jarvis* v. *Jarvis* (1893), 63 L. J. (CH.) 10 (assignment of debt charged on land).

SECT. 6
Definitions.

man can have an estate of freehold (*s*), and which is connected with land (*t*), is a tenement. Thus the word includes not only land, as the corporeal subject of inheritance, but also all heritable rights issuing out of land, or concerning, or annexed to, or exercisable over, the same, though they lie not in tenure—such as rents, commons, and other *profits à prendre* and tithes (*a*)—and offices or dignities which descend to heirs, whether they relate to land or not (*b*). But it does not include a personal annuity, that is, an annuity not charged upon or issuing out of land, although granted to a man and his heirs, nor an office which concerns only chattels (*c*).

"Tenement" as meaning the estate.

The word "tenement" is also used to denote not only the thing or right which is the subject of property, but also the estate in the thing. Thus, where a life estate is existing in land, both the land and the life estate are called tenements (*d*).

Popular meaning.

308. In popular language the term "tenement" means a house or part of a house (*e*) capable of separate occupation, and is

(*s*) "Tenement is a large word to pass not only lands and other inheritances which are holden, but also offices, rents, commons, *profits à prendre* out of lands, and the like, wherein a man hath any frank tenement, and whereof he is seised *ut de libero tenemento*" (Co. Litt. 6 a). Since these latter things are not the subject of tenure, it is clear that Sir E. COKE, in speaking of "frank tenement," referred to the freehold interest of which they were capable. 2 Bl. Com. 17, treats permanent incorporeal rights as tenements, because they can be "holden"; and this is adopted in *Beauchamp (Earl)* v. *Winn* (1873), L. R. 6 H. L. 223, 241. But here by "holden" must be understood that the right is actually possessed or enjoyed, not that it is held of a lord in the feudal sense. The technical meaning of "tenement" is not restricted by capacity for being the subject of tenure. This is clear from Sir E. COKE's definition. To constitute a right a tenement it is sufficient that it should savour of, that is, be incident to, land (see Challis, Law of Real Property, 3rd ed., p. 43); and, as to the inclusion of incorporeal rights as tenements, although not "holden," see Pollock and Maitland, History of English Law, Vol. II., p. 147.

(*t*) Or, as it is said, which savour of the realty (Co. Litt. 20 a).

(*a*) Co. Litt. 19 b, 20 a; *Martyn* v. *Williams* (1857), 1 H. & N. 817, 827. Such as a wayleave (*Hastings (Lord)* v. *North Eastern Railway*, [1898] 2 Ch. 674, 678; affirmed, [1899] 1 Ch. 656, C. A.; [1900] A. C. 260); or a rabbit warren (*R.* v. *Piddletrenthide (Inhabitants)* (1790), 3 Term Rep. 772; *Beauchamp (Earl)* v. *Winn, supra*); a several fishery (*Redington* v. *Millar* (1888), 24 L. R. Ir. 65, C. A.); and other *profits à prendre* (*Muskett* v. *Hill* (1839), 5 Bing. (N. C.) 694; *Martyn* v. *Williams, supra*); and tithes (*R.* v. *Skingle* (1718), 1 Stra. 100; *R.* v. *Ellis* (1816), 3 Price, 323); unless excluded by the context (*R.* v. *Nevill* (1846), 8 Q. B. 452). A coal duty levied under a local Act may be a tenement (*A.-G.* v. *Black* (1871), L. R. 6 Exch. 78, 82, 85). The Statute of Westminster II. (1285) 13 Edw. 1, c. 1, commonly called the statute De Donis, which created estates tail (see p. 241, *post*), refers only to tenements, and the extension of the term was perhaps due to the desire to make all heritable rights entailable under the statute. A rentcharge is a tenement within stat. (1429) 8 Hen. 6, c. 7, relating to parliamentary franchise (*Dodds* v. *Thompson* (1865), L. R. 1 C. P. 133; *Dawson* v. *Robins* (1876) 2 C. P. D. 38); see also *A.-G.* v. *Richmond (Duke)*, [1907] 2 K. B. 940.

(*b*) *Re Rivett-Carnac's (Sir J.) Will* (1885), 30 Ch. D. 136, 139; and see title PEERAGES AND DIGNITIES, Vol. XXII., pp. 269, 283, note (*h*).

(*c*) Co. Litt. 20 a; Shep. Touch. (ed. Preston) 91.

(*d*) Challis, Law of Real Property, 3rd ed., p. 44.

(*e*) *Cornish* v. *Cleife* (1864), 3 H. & C. 450, 451; *Dashwood* v. *Ayles* (1885), 16 Q. B. D. 295, C. A.; *Minifie* v. *Banger* (1885), 16 Q. B. D. 302, C. A.; see *R.* v. *Tadcaster (Inhabitants)* (1833), 4 B. & Ad. 703.

sometimes so used in statutes (*f*); and, where the language or the purpose of the statute so requires, it is restricted to property capable of visible and physical occupation, and does not include incorporeal rights (*g*).

SUB-SECT. 3.—*Hereditaments.*

309. Whatever may be inherited is a hereditament (*h*), and the term includes land as a physical object (*i*), money which is liable to

Meaning of "hereditaments."

(*f*) See *Yorkshire Insurance Co.* v. *Clayton* (1881), 8 Q. B. D. 421, 423, C. A.; *Grant* v. *Langston*, [1900] A. C. 383; *London and Westminster Bank* v. *Smith* (1901), 85 L. T. 747, C. A.; see title INHABITED HOUSE DUTY, Vol. XVII., pp. 192 *et seq.* A building divided into separate tenements constitutes separate houses within the meaning of a covenant not to erect more than one house on a site (*Ilford Park Estates, Ltd.* v. *Jacobs*, [1903] 2 Ch., 522; see *Rogers* v. *Hosegood*, [1900] 2 Ch. 388, C. A.; *Kimber* v. *Admans*, [1900] 1 Ch. 412, C. A.).

(*g*) *Redington* v. *Millar* (1888), 24 L. R. Ir. 65, C. A.; see *Fredericks* v. *Howie* (1862), 1 H. & C. 381. Thus in rating Acts the context may show that the words "tenements" and "hereditaments" are used to mean only permanent substantial objects (*R.* v. *Manchester and Salford Water Works Co.* (1823), 1 B. & C. 630; *Colebrooke* v. *Tickell* (1836), 4 Ad. & El. 916; *East London Waterworks Co.* v. *Mile-end Old Town* (*Trustees*) (1851), 17 Q. B. 358; *Lyndon* v. *Standbridge* (1857), 2 H. & N. 45); but a wider sense will be given to them if this appears to be the intention, where, for instance, particular rights are excepted (*R.* v. *Shrewsbury Paving Trustees* (1832), 3 B. & Ad. 216); and see *R.* v. *Barker* (1837), 6 Ad. & El. 388 (tithes); see also title RATES AND RATING, pp. 4 *et. seq.*, *ante*.

(*h*) Co. Litt. 6 a; *Winchester's* (*Marquis*) *Case* (1583), 3 Co. Rep. 1 a, 2 b; Shep. Touch. (ed. Preston) 91. The term signifies "all such things, whether corporeal or incorporeal [as] a man may have to him and his heirs by way of inheritance, and which, if they be not otherwise bequeathed," go to the heir, and not as chattels to the executor or administrator (*Lloyd* v. *Jones* (1848), 6 C. B. 81, 90)—that is, heritable property (*Prescott* v. *Barker* (1874), 9 Ch. App. 174, 190). Under the existing law, title by inheritance means the beneficial title of the heir-at-law after the purposes of administration have been satisfied under the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Part I.; see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., pp. 236 *et seq.*

(*i*) See p. 160, *post*, and see also pp. 137, 156, *ante*. If there is nothing specially to define the meaning of "hereditament," it refers to land as the subject-matter of rights, and not to the quantum of the interest in the land. The settled sense of "hereditaments" is to denote such things as may be the subject-matter of inheritance, but not inheritance itself (*Moor* v. *Denn* d. *Mellor* (1800), 2 Bos. & P. 247, 251, H. L.; *Chew* v. *Holroyd* (1852), 8 Exch. 249). Thus in the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 56, the phrase "corporeal or incorporeal hereditaments" includes leaseholds (*Tomkins* v. *Jones* (1889), 22 Q. B. D. 599, C. A.; see title COUNTY COURTS, Vol. VIII., pp. 430, 431). But on the construction of an Act of Parliament "hereditaments" has been held not to include copyholds (*A.-G.* v. *Lewin* (1837), 8 Sim. 366, 370; *Re Paddington Charities* (1837), 8 Sim. 629 (on the Poor Relief Act, 1819 (59 Geo. 3, c. 12), s. 17); *Stephenson* v. *Raine* (1853), 2 E. & B. 744; see title CHARITIES, Vol. IV., p. 257, note (*g*)). In the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 3, "lands" extends to "hereditaments of any tenure" (see p. 157, *ante*), and these words, it has been held, imply a corporeal hereditament (*Pinchin* v. *London and Blackwall Rail. Co.* (1854), 5 De G. M. & G. 851, C. A.; compare *Great Western Rail. Co.* v. *Swindon and Cheltenham Rail. Co.* (1884), 9 App. Cas. 787; *R.* v. *Cambrian Rail. Co.* (1871), L. R. 6 Q. B. 422; title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., p. 15).

SECT. 6. Definitions.

be invested in land and is treated in equity as land (*j*), heirlooms (*k*), and certain rights in land and other rights (*l*). Hereditaments are either corporeal or incorporeal, real or personal (*m*). In general, a tenement is also a hereditament; but some tenements, such as an estate for life, are not hereditaments, and some hereditaments, such as personal annuities limited to heirs, are not tenements (*n*).

Corporeal hereditaments.

310. Land itself, and also such physical objects as are annexed to and form part of it, or are treated as forming part of it, are corporeal hereditaments; and strictly are the only corporeal hereditaments (*o*). But the term "hereditament" includes estates in land which are capable of passing by descent (*p*), and those estates, whether legal or equitable, which entitle the owner to present possession of the land or to receipt of rent and profits are classed as corporeal hereditaments (*q*).

Incorporeal hereditaments.

311. Incorporeal hereditaments include (1) estates and interests in land which are not accompanied by present possession or receipt of rents and profits—that is, reversions, remainders, and executory interests (*r*), and conditions (*s*); (2) rights in land which are never

(*j*) *Basset* v. *St. Levan* (1894), 43 W. R. 165; *Re Gosselin, Gosselin* v. *Gosselin*, [1906] 1 Ch. 120; and see title EQUITY, Vol. XIII., p. 107.

(*k*) 2 Bl. Com. 17; and see pp. 240, 241, *post*, and title SETTLEMENTS.

(*l*) Thus, an inheritable dignity, whether it concerns land or not, is a hereditament (*Re Rivett-Carnac's* (*Sir J.*) *Will* (1885), 30 Ch. D. 136 *Cowley* v. *Cowley*, [1900] P. 305, 310, C. A.; affirmed, [1901] A. C. 405).

(*m*) Co. Litt. 6 a.

(*n*) See Co. Litt. 6 a; Shep. Touch. (ed. Preston) 91; Challis, Law of Real Property, 3rd ed., p. 44. In *Stephenson* v. *Raine* (1853), 2 E. & B. 744 (on the County Courts Act, 1846 (9 & 10 Vict. c. 95), s. 58 (corresponding to the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 56), see title COUNTY COURTS, Vol. VIII., p. 431), it was decided that the office of parish clerk held for life was a hereditament, on the ground that it was a tenement, and every tenement was a hereditament; but this seems to overlook the real nature of a hereditament; and see Shep. Touch. (ed. Preston) 91.

(*o*) "Corporeal hereditaments consist wholly of substantial and permanent objects, all of which may be comprehended under the general denomination of land only" (2 Bl. Com. 17); *hæreditas corporalis est, quæ tangi potest et videri; incorporalis, quæ tangi non potest nec videri* (Co. Litt. 9 a).

(*p*) An estate *pur autre vie* is not a hereditament, since the heir, if he takes, takes as special occupant, and not by inheritance (see p. 180, *post*; Challis, Law of Real Property, 3rd ed., p. 43).

(*q*) The immediate estate in the land is, in strictness, like any other right, incorporeal, but the actual possession attracts it into the class of corporeal hereditaments; or this classification can be treated as an instance of the confusion between the right of property and the subject of property (see p. 137, *ante*).

(*r*) Future interests in land are in fact incorporeal, and there is no reason, as in the case of present interests, to give them a fictitious nature and call them corporeal. The old modes of conveyancing under which an estate accompanied by possession passed by livery, while future estates and other rights in land passed by grant, gave a practical rule for distinguishing corporeal and incorporeal hereditaments. Corporeal hereditaments lay in livery; incorporeal hereditaments lay in grant (Co. Litt. 9 a, 49 a). The fact of possession still attracts present estates of inheritance into the class of corporeal hereditaments, although the conveyancing test is obsolete; and similarly future estates, since they carry no immediate right of

(*s*) For note (*s*), see next page.

accompanied by exclusive possession—these are seigniories, franchises, advowsons, rentcharges, rights of common and *profits à prendre*, and, possibly, easements(*t*); and (3) certain heritable rights not necessarily connected with land, such as offices(*u*) and personal annuities which pass to the heir(*a*).

possession, must, apparently, remain as incorporeal hereditaments. But there is a practical distinction between remainders and reversions and other incorporeal hereditaments, such as a rentcharge. A rentcharge is, like land, the subject of estates; a remainder or reversion is itself an estate, and may exist either in the land or the rentcharge. Hence the logically correct method might be to divide the subjects of estates into corporeal and incorporeal hereditaments, and to exclude estates themselves from the classification. But it is convenient and usual to speak of estates as hereditaments and this is in accordance with the fundamental definition. A remainder in fee may be inherited, but in the hands of any particular heir it may never fall into possession, and as regards him it is strictly incorporeal. For the opposite view, see Challis, Law of Real Property, 3rd ed., Mr. Sweet's note, *ibid.*, pp. 49 *et seq.*

(*s*) 2 Bl. Com. 17.

(*t*) As to incorporeal hereditaments, see, generally, Co. Litt. 9 a, 47 a, 49 a, 169 a; 2 Bl. Com., pp. 20 *et seq.*; Burton, Compendium of the Law of Real Property, 3rd ed., pp. 338 *et seq.* "An incorporeal hereditament is a right issuing out of a thing corporate (whether real or personal) or concerning, or annexed to, or exerciseable within, the same" (2 Bl. Com. 20; cited in *Re Christmas*, *Martin* v. *Lacon* (1886), 33 Ch. D. 332, C. A., *per* COTTON, L.J., at p. 338). As to seigniories, see p. 142, *ante*; title COPYHOLDS, Vol. VIII., pp. 3, 4, 8. As to franchises, see titles CONSTITUTIONAL LAW, Vol. VI., pp. 489 *et seq.*; COPYHOLDS, Vol. VIII., pp. 5 *et seq.*; FERRIES, Vol. XIV., pp. 555 *et seq.*; FISHERIES, Vol. XIV., pp. 569 *et seq.*; MARKETS AND FAIRS, Vol. XX., pp. 1 *et seq.* . As to advowsons, see title ECCLESIASTICAL LAW, Vol. XI., pp. 564 *et seq.* (an advowson in gross passes by the words "tenements and hereditaments" (*Westfaling* v. *Westfaling* (1746), 3 Atk. 460). As to rentcharges, see title RENTCHARGES AND ANNUITIES, pp. 463 *et seq.*, *post*. As to rights of common, see title COMMONS AND RIGHTS OF COMMON, Vol. IV., pp. 441 *et seq.*; and as to easements, see title EASEMENTS AND PROFITS À PRENDRE, Vol. XI., pp. 233 *et seq.* It is customary to describe rights such as those last-named as incorporeal hereditaments, and this usage has been recognised by the courts as regards easements; see title EASEMENTS AND PROFITS À PRENDRE, Vol. XI., p. 238, note (*e*). But it has been questioned whether, when appurtenant or appendant to land, they can be regarded as incorporeal hereditaments, since they pass with the land by livery; see Hood and Challis, Conveyancing and Settled Land Acts, 5th ed., p. 197. At the present time, however, the mode of conveyance is of secondary importance in this connection, and, in their nature, easements are clearly within the meaning of the term; see, also, Co. Litt. 121 a, to the effect that things incorporeal which lie in grant, as advowsons, commons, and the like, may be appendant to things corporeal, as a house or lands; and see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 361. But in taxing and rating statutes "hereditaments" may not include a mere easement (*Chelsea Waterworks Co.* v. *Bowley* (1851), 17 Q. B. 358; *Southport Corporation* v. *Ormskirk Union Assessment Committee*, [1894] 1 Q.B. 196, C. A.), though it will include a railway tunnel (*Metropolitan Rail. Co.* v. *Fowler*, [1893] A. C. 416), or other tunnel (*Holywell Union and Halkyn Parish* v. *Halkyn Drainage Co.*, [1895] A. C. 117); and see titles LAND TAX, Vol. XVIII., p. 308; RATES AND RATING, pp. 6 *et seq.*, *ante*. As to assessment for purpose of income tax, see title INCOME TAX, Vol. XVI., pp. 619 *et seq.*

(*u*) 2 Bl. Com. 36. As to peerages, see title PEERAGES AND DIGNITIES, Vol. XXII., pp. 261 *et seq.*

(*a*) 2 Bl. Com. 40; see title RENTCHARGES AND ANNUITIES, p. 479, *post*.

SECT. 6. **Definitions.**

Appendant, appurtenant, or in gross.

Incorporeal hereditaments may be either appendant, as seigniories (*b*); appurtenant, as easements (*c*); or in gross, as rentcharges (*d*). Rights of common and *profits à prendre* may be either appendant or appurtenant or in gross (*e*). Advowsons may be either appendant or in gross (*f*), and seigniories may exist in gross (*g*).

Real and personal hereditaments.

312. Hereditaments are also divided into real and personal. Real hereditaments include land, and estates of inheritance in land, and also all heritable rights which are connected with or incident to land (*h*). Shares in companies possessing land, where the proprietors have a direct interest in the land, are real hereditaments (*i*). Heritable rights which have no connection with land are personal hereditaments (*j*). Of this nature are personal annuities granted to a man and his heirs (*k*). Personal hereditaments, notwithstanding that they are limited to heirs and pass to heirs on an intestacy, are personal estate and pass under a residuary bequest of such estate (*l*).

SUB-SECT. 4.—*Real Estate.*

Meaning of "estate."

313. The term "estate" has two meanings. In its narrower meaning it denotes the fee simple of land and any of the various interests into which it can be divided, whether for life, or for a term of years, or otherwise (*m*). In its wider meaning it denotes

(*b*) A right appendant must have been created before the statute Quia Emptores (1290), 18 Edw. 1, c. 1; see p. 144, *ante*.

(*c*) See title EASEMENTS AND PROFITS À PRENDRE, Vol. XI., pp. 235 *et seq.*

(*d*) See title RENTCHARGES AND ANNUITIES, pp. 463 *et seq.*, *post*.

(*e*) See title EASEMENTS AND PROFITS À PRENDRE, Vol. XI., pp. 338, 339; title COMMONS AND RIGHTS OF COMMON, Vol. IV., p. 446.

(*f*) See title ECCLESIASTICAL LAW, Vol. XI., p. 564.

(*g*) See title COPYHOLDS, Vol. VIII., p. 4.

(*h*) Sir E. COKE speaks of hereditaments as real, personal, and mixed (Co. Litt. 6 a). By mixed hereditaments he may have meant hereditaments which do not confer estates in land, that is, incorporeal hereditaments which never give possession of the land; see p. 161, *ante*; compare Co. Litt. 20 a; Challis, Law of Real Property, 3rd ed., p. 45. But the distinction between real and mixed hereditaments has no practical result, and it is sufficient to treat both under the one head of real hereditaments. The practical distinction between real and personal hereditaments is that real hereditaments are entailable; personal hereditaments are not (Co. Litt. 19 b, 20 a).

(*i*) As to the former New River shares, see *Drybutter* v. *Bartholomew* (1723), 2 P. Wms. 127; *Townsend* v. *Ash* (1745), 3 Atk. 336; but these have ceased to exist as real estate; and see New River Company's Act, 1904 (4 Edw. 7, c. xlviii.). As to River Avon shares, see *Buckeridge* v. *Ingram* (1795), 2 Ves. 652; and see Challis, Law of Real Property, 3rd ed., pp. 46, 57.

(*j*) See *Re Christmas, Martin* v. *Lacon* (1886), 33 Ch. D. 332, 338, 345, C. A.

(*k*) *Stafford* (*Earl*) v. *Buckley* (1750), 2 Ves. Sen. 170; *Buckeridge* v. *Ingram*, *supra*.

(*l*) *Aubin* v. *Daly* (1820), 4 B. & Ald. 59; *Radburn* v. *Jervis* (1841), 3 Beav. 450, 461.

(*m*) "State or estate signifieth such inheritance, freehold, term for years, tenancy by statute merchant, staple, elegit, or the like, as any man hath in lands or tenements" (Co. Litt. 345 a). Statute merchant and statute staple were forms of security for money (see 2 Bl. Com. 160). Both are obsolete.

any property whatever, and is divided into real and personal estate (*n*).

"Real estate" is a technical term, and is in general to be construed in its technical sense (*o*). It comprises all freehold and copyhold lands, tenements, and hereditaments, but not leasehold interests (*p*). Freehold estates are either estates of mere freehold, that is, estates for life or lives, or estates of inheritance (*q*).

"Real estate."

SUB-SECT. 5.—*Chattels Real.*

314. Personal estate is divided into chattels real and chattels personal (*r*). Terms of years and tenancies by *elegit* (*s*) are

Chattels real.

(*n*) "The word 'estate' doth comprehend all that a man hath property or ownership in, and is divided into real and personal": (*Anon.* (1584), Skin. 193; *Barnes* v. *Patch* (1803), 8 Ves. 604; *Bridgewater* (*Countess*) v. *Bolton* (*Duke*) (1704), 6 Mod. Rep. 106). As to personal estate, see title PERSONAL PROPERTY, Vol. XXII., pp. 385 *et seq.*

(*o*) *Butler* v. *Butler* (1884), 28 Ch. D. 66, 71.

(*p*) *Holmes* v. *Milward* (1878), 47 L. J. (CH.) 522; *Butler* v. *Butler*, *supra*. The words "tenements and hereditaments" include all real estate (see 2 Jarman on Wills, 6th ed., 1287). In the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), the term extends to "manors, advowsons, messuages, lands, tithes, rents, and hereditaments, whether freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein (*ibid.*, s. 1). In a will, a devise of real estate will not generally pass leaseholds for years (see *Smith* v. *Baker* (1737), 1 Atk. 385, 386; *Parker* v. *Marchant* (1843), 5 Man. & G. 498; 2 Y. & C. Ch. Cas. 279; *Holmes* v. *Milward*, *supra*; *Butler* v. *Butler*, *supra*), or leasehold ground rents (*Turner* v. *Turner* (1852), 21 L. J. (CH.) 843), but under special circumstances or by reason of the context leaseholds for years may pass (see *Swift* v. *Swift* (1859), 1 De G. F. & J. 160; *Gully* v. *Davis* (1870), L. R. 10 Eq. 562; *Moase* v. *White* (1876), 3 Ch. D. 763; *Re Davison*, *Greenwell* v. *Davison* (1888), 58 L. T. 304; *Re Uttermare*, *Leeson* v. *Foulis*, [1893] W. N. 158). "Lands and tenements" *primâ facie* mean real estate, but will pass leaseholds if there is no real estate (*Rose* v. *Bartlett* (1633), Cro. Car. 292, 293; *Chapman* v. *Hart* (1749), 1 Ves. Sen. 271; *Thompson* v. *Lawley* (*Lady*) (1800), 2 Bos. & P. 303; see *Davis* v. *Gibbs* (1730), 3 P. Wms. 26, H. L.), or if the intention to include leaseholds is clear (*Swift* v. *Swift* (1859), 1 De G. F. & J. 160, 173); and, since the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 26, a general devise of "lands" includes leaseholds, unless the contrary appears (*Prescott* v. *Barker* (1874), 9 Ch. App. 174); see also title WILLS. Leaseholds for lives are real estate (*Weigall* v. *Brome* (1833), 6 Sim. 99). In the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Part I., "real estate" does not include land of copyhold or customary freehold tenure where admittance is necessary (*ibid.*, s. 1 (4)). A gale of mines in the Forest of Dean is an "interest in the nature of real estate" within the Dean Forest Amendment Act, 1861 (24 & 25 Vict. c. 40) (*Morgan* v. *Crawshay* (1871), L. R. 5 H. L. 304); and see title MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 646, 647. An action by an heir-at-law against an administratrix for an account of rents is not a cause or matter relating to any real estate within R. S. C., Ord. 51, r. 1, so as to enable an order for sale to be made under that rule (*Re Staines* (1886), 33 Ch. D. 172).

(*q*) See Littleton's Tenures, s. 57; note (*m*), p. 170, *post*.

(*r*) *Bridgewater* (*Countess*) v. *Bolton* (*Duke*), *supra*, at p. 107. As to chattels personal, see title PERSONAL PROPERTY, Vol. XXII., pp. 385 *et seq.*

(*s*) *Johns* v. *Pink*, [1900] 1 Ch. 296. As to *elegit*, see title EXECUTION, Vol. XIV., pp. 61 *et seq.*

SECT. 6. Definitions.

chattels real—chattels, because they devolve at common law with chattels in the proper sense on the personal representatives (*t*); real, because they are derived out of real estate (*u*).

The expression "lands, tenements, and hereditaments" comprises both real estate and chattels real; hence, while it does not include personal chattels (*v*), it comprises copyholds (*a*) and chattels real (*b*), as well as freeholds.

Part II.—Estates and Interests in Real Estate (Other than Copyholds) at Common Law.

SECT. 1.—*Estate in Fee Simple.*

SUB-SECT. 1.—*Quantum of Estate.*

Nature of fee simple.

315. An estate in fee simple approaches as near to absolute ownership as the system of tenure will allow (*c*). It is capable of existing as long as there are heirs-at-law of the owner for the time being, and since the law does not expect that there will be a failure of heirs (*d*) the duration of the estate is, in theory, unlimited. If in fact the owner dies intestate and without heirs, the land, save so far as it is required for payment of his debts, escheats to the lord—usually the Crown—under whom it is held (*e*). But this is the only way in which the estate can now determine (*f*). Moreover,

(*t*) See p. 138, *ante*; see *Davis* v. *Gibbs* (1730), 3 P. Wms. 26, 30, H. L.; *Whitaker* v. *Ambler* (1758), 1 Eden, 151, 152.

(*u*) *Bridgewater* (*Countess*) v. *Bolton* (*Duke*) (1704), 6 Mod. Rep. 106; *Ridout* v. *Pain* (1747), 3 Atk. 486, 492; *Smith* v. *Baker* (1737), 1 Atk. 385, 386; or because they concern the realty (Co. Litt. 118 b). A rent issuing out of a term of years is a chattel real (*Re Fraser*; *Lowther* v. *Fraser*, [1904] 1 Ch. 111, 115; affirmed, [1904] 1 Ch. 726, C. A.).

(*v*) For instance, in the Statute of Frauds (29 Car. 2, c. 3); see *Bayley* v. *Boulcott* (1828), 4 Russ. 345.

(*a*) *Withers* v. *Withers* (1752), Amb. 151; and also in a statute, unless the lord's rights would be prejudiced (*Doe* d. *Tunstill* v. *Bottriell* (1833), 5 B. & Ad. 131); and see title COPYHOLDS; Vol. VIII., p. 70.

(*b*) *Forster* v. *Hale* (1798), 3 Ves. 696.

(*c*) A man cannot have a greater estate of inheritance than fee simple (Littleton's Tenures, s. 11). In this phrase "fee" has lost its original meaning of feud or benefice (see note (*p*), p. 139, *ante*), and denotes inheritance, while "simple" denotes that the land is descendible to the heirs generally, without restraint to any particular class of heirs, such as heirs of the body (Co. Litt. 1 b; see 2 Bl. Com. 105). The appropriate description to denote both ownership and tenure of land is that the owner is "seised in his demesne as of fee"; of incorporeal hereditaments, such as a rentcharge, that he is "seised as of fee"; see 2 Bl. Com. 106. As to the theory of absence of absolute ownership in land, see p. 138, *ante*.

(*d*) *Pells* v. *Brown* (1620), Cro. Jac. 590, 592.

(*e*) Co. Litt. 13 a; see p. 139, *ante*; and see title DESCENT AND DISTRIBUTION, Vol. XI., p. 23.

(*f*) But, as to estates upon condition and determinable fees, see pp. 168 *et seq.*, *post*.

the tenant for the time being who transfers the fee simple transfers an interest which the law treats as exhausting the possible duration of the ownership of the land. Consequently, neither a reversion nor a remainder can be reserved or limited upon such a transfer, nor can there be any possibility of reverter (*g*). But a fee simple may be devised by will subject to an executory devise over, and such devise over, provided it is so limited that it must, if it takes effect, take effect within the period allowed by the rule against perpetuities (*h*), is effectual and cannot be defeated by the prior devisee (*i*). Consequently, an alienee from such devisee takes subject to the executory devise (*k*).

How granted.

316. Apart from statute, an estate in fee simple can only be created *inter vivos* by a limitation to the grantee "and his heirs" (*l*). It is not sufficient to use words implying the indefinite duration of the estate, such as a limitation to the grantee "for ever." The word "heirs" makes the estate of inheritance (*m*), and it is to the estate thus limited that the law attaches the incident of indefinite duration (*n*). But in deeds executed since the

(*g*) *Pells* v. *Brown* (1620), Cro. Jac. 590, 592; Challis, Law of Real Property, 3rd ed., p. 220. But this is so only where the estate is held by an individual under a limitation to him and his heirs; if it is held by a corporation, and the corporation is dissolved, there is no escheat, and the land, unless otherwise provided by statute, reverts to the donor (Co. Litt. 13 b; Challis, Law of Real Property, 3rd ed., pp. 35, 174, 226; title CORPORATIONS, Vol. VIII., p. 373).

(*h*) See title PERPETUITIES, Vol. XXII., pp. 300, 301.

(*i*) *Pells* v. *Brown*, *supra*.

(*k*) But the devisee has the statutory power of sale of a tenant for life (Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 58 (i), (ii); see title SETTLEMENTS; and, as to the avoidance of certain executory limitations, see p. 237, *post*.

(*l*) In practice the limitation is to the "heirs and assigns"; but the words "and assigns" do not enlarge the estate; this is fully created by the limitation to "heirs"; they are only declaratory of the power of alienation which would exist without them and have no conveyancing value (*Brookman* v. *Smith* (1871), L. R. 6 Exch. 291, 306; affirmed (1872), L. R. 7 Exch. 271, Ex. Ch.; *Milman* v. *Lane*, [1901] 2 K. B. 745, C. A.); though in a will the word "assigns" may sometimes operate to give a power of appointment (*Quested* v. *Michell* (1855), 1 Jur. (N. S.) 488; see *Brookman* v. *Smith*, *supra*; *Milman* v. *Lane*, *supra*). Originally the insertion of the word "assigns" was necessary in order to give the power of alienation (Pollock and Maitland, History of English Law, Vol. II., p. 14; and see p. 288, *post*).

(*m*) The word "heirs" is construed as heirs general so as to give the fee simple, notwithstanding that the grantee cannot have any heirs except heirs of his body; *e.g.*, if the grantee is a bastard (1 Preston, Abstracts of Titles, 272).

(*n*) Littleton's Tenures, s. 1; 2 Bl. Com. 107. It is apparently essential to use the word "heirs" in the plural (Co. Litt. 8 b; *Chambers* v. *Taylor* (1837), 2 My. & Cr. 376); but this was doubted in *Dubber* d. *Trollope* v. *Trollope* (1734), Amb. 453, 458); though in a will, when words of limitation were necessary to pass the fee, "heir" might be *nomen collectivum*, so as to imply the plural (Co. Litt. 8 b, note (4); and see the criticism of the note in Challis, Law of Real Property, 3rd ed., p. 221). Perhaps the omission of "his" does not destroy the effect of the limitation, but in a limitation to two persons "and heirs," the omission of the word "their" makes the limitation void for uncertainty, and they have but an estate for their lives (Co. Litt. 8 b). Apparently a limitation to A. "or his heirs" gives A. only an estate for life (*Mallory's Case* (1601), 5 Co. Rep. 111 b, 112 a); though in a grant to A. "or his heirs to hold to him and his heirs," the

SECT. 1. **Estate in Fee Simple.**

31st December, 1881, an estate in fee simple can be limited by the words "in fee simple" (*o*). If the word "heirs," or, since such date, the phrase "in fee simple," is not used, the limitation creates only an estate for life (*p*).

When the word "heirs" unnecessary.

The word "heirs" is not required in wills. In the absence of a contrary intention, a devise by a testator seised in fee simple passes the whole estate to the devisee without words of limitation (*q*). Moreover, an estate in fee simple may be created by reference to a limitation in another instrument or in another part of the same instrument where the word "heirs" is used, although it is not used in the referential limitation (*r*); and the word "heirs" is not required upon a release by one coparcener or joint tenant seised in fee simple to the others (*s*); nor upon the grant of a rent between such persons by way of equality of partition (*t*). Words implying

word "or" is treated as an error and corrected (*Wright* v. *Wright* (1750), 1 Ves. Sen. 409, 411; see *Goodtitle* d. *Dodwell* v. *Gibbs* (1826), 5 B. & C. 709; Challis, Law of Real Property, 3rd ed., p. 221).

(*o*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 51. It has been decided in England that the exact statutory phrase must be used; "in fee" is not enough (*Re Ethel and Mitchells and Butlers' Contract*, [1901] 1 Ch. 945); but in *Re Ottley's Estate*, [1910] 1 I. R. 1, the word "simple" was added by the court to the habendum of a disentailing deed.

(*p*) Littleton's Tenures, s. 1; but by special custom a copyhold in fee can be granted without the word "heirs" (2 Preston on Estates, 67). Before 1882, even the words "in fee simple" did not create more than a life interest (Shep. Touch. (ed. Preston) 106). In a grant to a corporation sole, the word "successors" is necessary to pass the fee simple (Co. Litt. 8 b), otherwise only a life estate passes (Co. Litt. 94 b); but when grants in frankalmoin were possible, a grant in fee simple in frankalmoin could be made to a corporation sole without mentioning successors (*ibid.*). In a grant to a corporation aggregate a fee simple passes without mentioning successors, "for that the body never dies" (*ibid.*; 2 Bl. Com. 108; see title CORPORATIONS, Vol. VIII., p. 371). The limitation of an equitable estate is *primâ facie* treated with the same strictness as that of a legal estate, and the word "heirs" is required to pass the equitable fee (*Re Whiston's Settlement, Lovatt* v. *Williamson*, [1894] 1 Ch. 661; *Re Irwin, Irwin* v. *Parkes*, [1904] 2 Ch. 752); but this rule is not absolute, and if there is a clear intention that the fee should pass, effect will be given to it (*Re Oliver's Settlement, Evered* v. *Leigh*, [1905] 1 Ch. 191; *Re Thursby's Settlement, Grant* v. *Littledale*, [1910] 2 Ch. 181, 189, C. A.; and see title EQUITY, Vol. XIII., pp. 94, note (*s*), 95, note (*c*)).

(*q*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 28; and see title WILLS. Even before this statute a devise was not construed with the same strictness as a grant, and the entire fee simple passed if there were words to indicate such an intention (2 Bl. Com. 108).

(*r*) Co. Litt. 9 b; *Garde* v. *Garde* (1843), 3 Dr. & War. 435. But words of limitation are not supplied by reason of the grantee being defined so as to include his "heirs" (*Re Ford and Ferguson's Contract*, [1906] 1 I. R. 607).

(*s*) Co. Litt. 9 b. *I.e.*, "when an estate of inheritance passeth and continueth"; and similarly upon a release, when an estate of inheritance passeth and continueth not, but is extinguished; when, for instance, the grantee of a rent in fee simple releases the rent to the tenant of the land, the rent is extinguished for ever, although the tenant's heirs are not mentioned (*ibid.*; Shep. Touch. (ed. Preston) 327).

(*t*) "Because the grantor has a fee simple in consideration whereof he granted the rent" (Co. Litt. 10 a); and on a bargain and sale for valuable consideration, and on a fine or recovery, the fee simple might pass without

the right to receive a rentcharge in perpetuity may be effectual to create a rentcharge in fee (*a*).

SUB-SECT. 2.—*Incidents of Estate.*

(i.) *Enjoyment.*

Rights of user.

317. Land subject to easements (*b*) or to restrictive covenants (*c*) cannot be used in a manner inconsistent with the proper enjoyment of the easements, or with the due observance of the covenants; and, in certain circumstances, the use of land may interfere to such an extent with the comfort of neighbouring owners or occupiers as to constitute an actionable nuisance (*d*); but, short of this, an owner in fee simple is subject to no restrictions as to the use to which he may put the land, and he may exercise over it acts of ownership of all kinds, including the commission of waste, such as the felling of timber, the opening and working of mines, and the pulling down of houses (*e*). If, however, his estate is subject to an executory devise over, he is in the same position as a tenant for life without impeachment of waste, and he may not commit equitable waste (*f*).

(ii.) *Alienation.*

Rights of alienation.

318. The owner of an estate in fee simple has an absolute right to alienate the land *inter vivos* (*g*), and, subject to the provisions of

words of limitation; see Challis, Law of Real Property, 3rd ed., p. 223, and authorities there referred to.

(*a*) Challis, Law of Real Property, 3rd ed., p. 222, n., referring to 18 Vin. Abr. 472 (1) (Rent (A.), pl. 1).

(*b*) See title EASEMENTS AND PROFITS À PRENDRE, Vol. XI., pp. 233 *et seq.* As to the natural right of support, see *ibid.*, p. 319; and as to the right to dig so as to divert water from neighbouring land, see *ibid.*, p. 313; *Acton* v. *Blundell* (1843), 12 M. & W. 324, Ex. Ch.; *Chasemore* v. *Richards* (1859), 7 H. L. Cas. 349; and see title MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 570 *et seq.*

(*c*) See title SALE OF LAND.

(*d*) In accordance with the maxim, *Sic utere tuo ut alienum non lædas;* but there must be an injury recognised by law as actionable. A thing lawful in itself does not in general become actionable by being done with an intention to cause injury or annoyance, but this may be so if an owner with such intention does an act, such as burning limestone on a particular part of his land, when he might just as well do it elsewhere without causing annoyance (*Bradford Corporation* v. *Pickles*, [1895] A. C. 587, 598); and see title NUISANCE, Vol. XXI., pp. 524 *et seq.*

(*e*) *A.-G.* v. *Marlborough* (*Duke*) (1818), 3 Madd. 498; compare *Liford's Case* (1614), 11 Co. Rep. 46 b, 50 a; *Jervis* v. *Bruton* (1692), 2 Vern. 251; and see titles AGRICULTURE, Vol. I., pp. 295, 296; MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 510, 511; and as to waste, see, further, p. 175, *post.*

(*f*) *Turner* v. *Wright* (1860), 2 De G. F. & J. 234, 246. Previously the opinion seems to have been that the court would interfere to restrain waste in pursuance of the settlor's intention (*Robinson* v. *Litton* (1744), 3 Atk. 209; *Stansfield* v. *Habergham* (1804), 10 Ves. 273, 278). But the will or settlement can expressly prohibit waste, which will then be restrained, notwithstanding that the prohibition is also enforced by a clause of forfeiture (*Blake* v. *Peters* (1863), 1 De G. J. & Sm. 345, C. A.). As to waste by tenant for life without impeachment for waste, see p. 176, *post;* title SETTLEMENTS.

(*g*) See pp. 286; 288, *post.*

SECT. 1. Estate in Fee Simple.

the Land Transfer Act, 1897 (*h*), he can dispose of it by will (*i*). If his estate is subject to an executory limitation over, on failure of his issue, or in any other event (*k*), he has, when his estate is in possession, the statutory powers of sale, exchange, partition, and leasing conferred on a tenant for life by the Settled Land Acts (*l*).

(iii.) *Transmission by Operation of Law.*

Transmission and devolution.

319. During the life of the owner in fee simple he is liable to be deprived of his estate by process of execution (*m*), or by the operation of the law of bankruptcy (*n*); and upon his death, except in the case of a legal interest in copyholds, it devolves in the first instance on his personal representatives (*o*). So far as the land is not required for payment of his debts, the beneficial interest devolves, if he has disposed of it by will, upon the specific or general devisee (*p*); otherwise, upon his heir-at-law ascertained in accordance with the Inheritance Act, 1833 (*q*).

SECT. 2.—*Modified Fees.*

SUB-SECT. 1.—*In General.*

Modified fee.

320. Estates in fee can be created subject to certain modifications, and these give rise to estates upon condition—sometimes called "fee simple conditional" (*r*),—determinable fees, conditional fees, and qualified fees.

SUB-SECT. 2.—*Creation of Estates.*

(i.) *Estates in Fee upon Condition.*

Creation of estate upon condition.

321. An estate in fee simple may be granted upon condition, and, if the event contemplated by the condition happens, the grantor

(*h*) 60 & 61 Vict. c. 65, s. 1; and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 238.

(*i*) By the common law, land held in fee simple was not devisable by will, but by the custom of London and certain other cities and boroughs land was devisable (Littleton's Tenures, s. 167; Co. Litt. 111 a). Under stat. (1540) 32 Hen. 8, c. 1, explained and amended by stat. (1542—3) 34 & 35 Hen. 8, c. 5, tenants in socage (see p. 141, *ante*) could devise the whole, and tenants by knight service (see p. 140, *ante*) two-thirds of their lands; see Co. Litt. 111 b. Upon the abolition of tenure in knight service, and the conversion of that tenure into socage tenure (see p. 147, *ante*), the power to devise extended to all lands held in fee simple by lay tenure. The above statutes were repealed, and a new statutory power of devising land was given by the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), ss. 2, 3; see title WILLS; and, as to copyholds, see title COPYHOLDS, Vol. VIII., p. 109.

(*k*) Such as failure to comply with a condition (*Re Richardson, Richardson* v. *Richardson*, [1904] 2 Ch. 777).

(*l*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 58 (1) (ii.). As to these powers, see title SETTLEMENTS. As to the effect of a conveyance under the statute, see the Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 20, 58 (2); title SETTLEMENTS.

(*m*) See title EXECUTION, Vol. XIV., pp. 61 *et seq.*

(*n*) See title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 143 *et seq.*

(*o*) See title EXECUTORS AND ADMINISTRATORS, Vol. XIV., pp. 238 *et seq.*

(*p*) See title WILLS.

(*q*) 3 & 4 Will. 4, c. 106; see title DESCENT AND DISTRIBUTION, Vol. XI., pp. 4, 7 *et seq.*

(*r*) See note (*b*), p. 169, *post.*

can re-enter and determine the estate, either by virtue of the condition merely, if it is suitably expressed, or otherwise by virtue of an express proviso for re-entry (*s*). Thus, if the land is granted in fee simple upon condition that a specified yearly rent shall be paid, a right of entry is implied, and the grantor can re-enter if the rent is in arrear (*t*). The same effect is produced where the grant, after reserving a rent, contains an express proviso that, if the rent shall be in arrear, the grantor and his heirs may re-enter (*a*). Similarly there may be a proviso for re-entry if the land ceases to be used for a specified purpose (*b*).

322. But an estate upon condition cannot be defeated without actual entry, or claim equivalent to entry; it is not *ipso facto* defeated by the happening of the critical event (*c*); and, since the grant of the

How defeated.

(*s*) Littleton's Tenures, s. 325. Besides conditions expressed in the grant there may be conditions implied by law. Thus, before the Statute Quia Emptores (1290), 18 Edw. 1, c. 1 (see p. 144, *ante*), the grant of an estate in fee simple to be held of the grantor implied a condition that the services should be performed (Fearne, Contingent Remainders, 9th ed., p. 382, n.) As to such conditions, see Littleton's Tenures, s. 378; Co. Litt. 233 b. LITTLETON treats words of limitation as conditions in law (Littleton's Tenures, s. 380).

(*t*) Littleton's Tenures, ss. 328, 331. Other words of condition are "Provided always," "so that" (Littleton's Tenures, s. 329; Co. Litt. 203 b). In a condition a double negative does not necessarily make an affirmative (Co. Litt. 223 b); and see titles DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 478; LANDLORD AND TENANT, Vol. XVIII., p. 531. Since no reversion exists on a grant in fee, such a rent is not rent service. As to payment of the rent, see Littleton's Tenures, s. 341; and see titles LANDLORD AND TENANT, Vol. XVIII., pp. 464, 465; RENTCHARGES AND ANNUITIES, pp. 501 *et seq.*, *post*.

(*a*) Littleton's Tenures, ss. 325, 330, 331. Such a rent is not incident to a reversion, inasmuch as since the Statute Quia Emptores (1290), 18 Edw. 1, c. 1, no tenure is created between grantor in fee simple and grantee; see *Doe* d. *Freeman* v. *Bateman* (1818), 2 B. & Ald. 168, 170; and see p. 144, *ante*.

(*b*) See *Re Hollis' Hospital* (*Trustees*) *and Hague's Contract*, [1899] 2 Ch. 540, where land was granted to trustees in fee for a charity in 1726, subject to a proviso that if at any time it should be employed for any other purposes, it should revert to the right heirs of the grantor. Originally mortgages were made by way of feoffment upon condition, the condition being that if the feoffor paid the debt on the agreed day he might enter (Littleton's Tenures, s. 332; Co. Litt. 205 a, b; *Seymor's Case* (1612), 10 Co. Rep. 95 b, 97 b). LITTLETON says (Littleton's Tenures, s. 350) that if a lease for years was made with livery of seisin, an estate in fee simple might arise by condition precedent, *e.g.*, if the lessee paid a certain sum within the term, but this was questioned (Co. Litt. 216 b, 217 a). In both the cases last mentioned the estate is called a fee simple conditional; but, to avoid confusion with conditional fees (see p. 172, *post*), it is better to use the phrase "fee simple upon condition." Conditions precedent occur in the limitation of future estates; in the present connection only conditions subsequent are material. As to conditions precedent and conditions subsequent, see *Re Greenwood, Goodhart* v. *Woodhead*, [1903] 1 Ch. 749, C. A.

(*c*) Co. Litt. 214 b, 218 a; Leake, Law of Property in Land, 2nd ed., p. 169. But this only applies to an estate of freehold in corporeal hereditaments; it does not apply to incorporeal hereditaments (*A.-G.* v. *Cummins*, [1906] 1 I. R. 406, 408); and an estate for years can be made *ipso facto* void (Co. Litt. 214 b; and see title LANDLORD AND TENANT, Vol. XVIII., p. 530). So also can an estate of freehold under words operating as a limitation and not as a condition (Co. Litt. 214 b; *Fitchet*

SECT. 2. **Modified Fees.**

estate exhausts the fee, the right of re-entry cannot be limited by way of remainder (*d*); it can only be reserved to the grantor and his heirs (*e*), and it exists in their favour as a possibility of reverter (*f*).

Validity of condition.

323. Such a condition is called a common law condition, and is, apparently, subject to the rule against perpetuities (*g*). If this is so, it is invalid, unless it is confined within the limits allowed by the rule (*h*). The condition is invalid also if it is unlawful (*i*), and, since an estate in fee simple is in its nature alienable, a condition in restraint of alienation is repugnant and therefore void (*j*).

(ii.) *Determinable Fees.*

Determinable fee.

324. An estate in fee may be granted with words of direct limitation (*k*) so as to be *primâ facie* a fee simple, but with further words—sometimes called words of collateral limitation (*l*)—whereby it is liable to be determined on the happening of some future event, provided that this is of such a nature that by possibility it may never happen at all (*m*). An estate so limited is called a "determinable fee" (*n*), and moreover it is no objection that the future

v. *Adams* (1740), 2 Stra. 1128; see the text, *infra*). Upon re-entering the grantor is, in general, restored to his old estate (Littleton's Tenures, s. 325); as to possible exceptions, see Co. Litt. 202 a. A condition under which the grantor is to enter for non-payment of rent and hold till the arrears are satisfied does not restore to him an estate of freehold (*ibid.*, 203 a).

(*d*) See pp. 213, 217, *post.*

(*e*) Littleton's Tenures, s. 347; Co. Litt. 214 b, 379 a; see *Manning's Case* (1609), 8 Co. Rep. 94 b, 95 b.

(*f*) See p. 237, *post.*

(*g*) *Re Hollis' Hospital (Trustees) and Hague's Contract*, [1899] 2 Ch. 540; *Re Da Costa, Clark* v. *Church of England Collegiate School of St. Peter*, [1912] 1 Ch. 337.

(*h*) It has been objected that common law conditions are older than the rule against perpetuities (see Challis, Law of Real Property, 3rd ed., pp. 187, 207); but the tendency is to extend the application of the rule so as to cover future interests of all kinds. As to the reasons for which common law conditions may, perhaps, be excluded, see title PERPETUITIES, Vol. XXII., p. 315, note (*q*).

(*i*) Co. Litt. 206 b.

(*j*) Littleton's Tenures, s. 360; Co. Litt. 206 b; *Re Machu* (1882), 21 Ch. D. 838; and see title GIFTS, Vol. XV., pp. 421—423.

(*k*) See p. 165, *ante.*

(*l*) 1 Preston on Estates, 42; see Challis, Law of Real Property, 3rd ed., p. 252.

(*m*) 1 Preston on Estates, 479. Where the event must happen, the estate is a freehold inferior in quantum to a fee simple, if the event is to happen at an uncertain time, *e.g.*, on the falling of a life, so as to make the estate an estate *pur autre vie*; if the event is to happen at a fixed time, the estate is a chattel real (Challis, Law of Real Property, 3rd ed., p. 251; see Littleton's Tenures, s. 740).

(*n*) The possibility of such estates is generally assumed by the recognised authorities. Sir E. COKE calls the estate a fee simple limited and qualified (*Seymor's Case* (1612), 10 Co. Rep. 95 b); Preston calls it a determinable fee (1 Preston on Estates, 443); and Butler calls the estate a limited fee (Fearne, Contingent Remainders, 9th ed., p. 382, n.), and the limitation a conditional limitation (*ibid.*, p. 10, n.). But the term "conditional limitation" is more conveniently confined to shifting uses and executory devises in which the

event may happen at a time beyond the limit allowed by the rule against perpetuities (*o*). But since the possible duration of the estate exhausts the fee, no remainder can be limited upon it; and the grantor retains only a possibility of reverter (*p*).

How enlarged into absolute fee simple.

If the future event is such that it will always remain liable to happen (*q*), the determinable fee can only be enlarged into an absolute fee simple by release of the possibility of reverter. If the future event is such that it may become impossible to happen (*r*), then, upon such impossibility being ascertained, the possibility of reverter is extinguished, and the determinable fee is enlarged into an absolute fee simple (*s*). If the event happens, the estate is thereby determined by force of the collateral limitation, without entry by the grantor or his heirs (*t*).

ultimate limitation is really conditional; see Gray, Rule against Perpetuities, 2nd ed., p. 24. Words suitable for introducing the collateral limitation are the English equivalents of "*quamdiu, dummodo, dum, quousque, durante*" etc. (*Portington's* (*Mary*) *Case* (1613), 10 Co. Rep. 35 b, 41 b; Co. Litt. 234 b; see *Re Machu* (1882), 21 Ch. D. 838, 843). A list of such limitations, actual or suggested, is given in Challis, Law of Real Property, 3rd ed., pp. 255—260. In modern times it has been suggested that a determinable fee is impossible since the Statute Quia Emptores (1290), 18 Edw. 1, c. 1 (see p. 144, *ante*) (Sanders, Uses and Trusts, 5th ed., Vol. I., p. 208; Gray, Rule against Perpetuities, 2nd ed., p. 31; Pollock, Land Laws, p. 213; Leake, Law of Property in Land, 2nd ed., p. 25; and see the discussion as to determinable fees in trustees in *Collier* v. *Walters* (1873), L. R. 17 Eq. 252, 261). But this view has not been acquiesced in (Challis, Law of Real Property, 3rd ed., p. 437; Sir Howard Elphinstone, in the Law Quarterly Review, Vol. II., p. 394; and see Mr. Gray's Reply, Rule against Perpetuities, 2nd ed., pp. 556 *et seq.*). In practice determinable fees are obsolete, the same object being attained by shifting uses and executory devises, and these are more effectual because the substituted estates can be limited to third persons. The examples of determinable fees given by Mr. Challis (Law of Real Property, 3rd ed., pp. 255—260) include, as Mr. Gray points out (Rule against Perpetuities, 2nd ed., p. 29, n. (6)), many instances of shifting uses and executory devises, and the list is, perhaps, rather curious than useful; see also *A.-G.* v. *Cummins*, [1906] 1 I. R. 406; *Re Leach, Leach* v. *Leach*, [1912] 2 Ch. 422, 427.

(*o*) Gray, Rule against Perpetuities, 2nd ed., p. 312; *A.-G.* v. *Cummins*, *supra*. The principle is either that possibilities of reverter are older than the rule against perpetuities and are subject only to the common law, or that the collateral limitation determines, but does not originate, an estate. The latter is probably the better reason. See, further, title PERPETUITIES, Vol. XXII., pp. 300 *et seq.*, 312 *et seq.*, 335 *et seq.*, 348 *et seq.*, 353 *et seq.*

(*p*) Co. Litt. 18 a; Challis, Law of Real Property, 3rd ed., p. 83.

(*q*) *E.g.*, where land is granted to A. and his heirs so long as B. has heirs of his body, this is in effect a base fee; or so long as the Church of St. Paul shall stand (Plowd. 557).

(*r*) *E.g.*, until the marriage of a specified person; if the person dies unmarried, the estate is enlarged into a fee simple absolute (1 Preston on Estates, 432, 442; Challis, Law of Real Property, 3rd ed., p. 256; *Re Leach, Leach* v. *Leach*, *supra*). But such limitations are made by shifting use; see p. 279, *post*. The subject is mainly theoretical, and it is unnecessary to give further examples.

(*s*) Challis, Law of Real Property, 3rd ed., p. 254.

(*t*) It has been generally assumed that the determination is in favour of the grantor and his heirs, and this is implied in the phrase "possibility of reverter." But the view has been advanced that, since the Statute Quia Emptores (1290) (18 Edw. 1, c. 1) (see p. 144, *ante*), the absence of tenure between grantor and grantee gives the benefit of the reverter to the lord

SECT. 2. Modified Fees.

(iii.) *Conditional Fees.*

Conditional fees.

325. A conditional fee is an estate which has not been possible as regards freeholds since the Statute De Donis (*a*). The limitation of such a fee before the statute was the same as the limitation of an estate tail after the statute, that is, to the grantee and the heirs of his body, either generally, or restricted to a special class of heirs of his body (*b*). The grant was construed as a conditional gift in fee simple to this extent, namely, that if the grantee had issue born capable of inheriting according to the form of the grant, the condition was treated as having been performed for the purpose of enabling the grantee to alienate the land for an estate in absolute fee simple (*c*); but if the grantee did not alienate, the land descended to the class of heirs named in the grant (*d*); if, on the other hand, he died without having had issue capable of inheriting, the estate came to an end and the land reverted to the grantor (*e*).

Conditional fees were, as regards freehold lands, turned into estates tail by the Statute De Donis (*a*), but they may still exist as regards other hereditaments, since these are not within the statute (*f*); and it appears that in manors where there is no custom to entail, a grant of copyhold land to the grantee and the heirs of his body gives a customary fee, and is construed by the analogy of conditional fees at common law (*g*).

(iv.) *Qualified Fees.*

Qualified fees.

326. In lieu of limiting an estate to a man and his heirs, the estate may be specially limited to a man and the heirs of an

as a *quasi*-escheat (Sir Howard Elphinstone in the Law Quarterly Review, Vol. II., p. 394; Pollock, Land Laws, p. 215; and, on this, see Gray, Rule against Perpetuities, 2nd ed., p. 556).

(*a*) Stat. (1285) 13 Edw. 1, c. 1.

(*b*) Co. Litt. 19 a; Challis, Law of Real Property, 3rd ed., p. 263; and as to such fees, see *Willion* v. *Berkley* (1562), 1 Plowd. 223, 235, 242.

(*c*) Pollock and Maitland, History of English Law, Vol. I., p. 17; Challis, Law of Real Property, 3rd ed., p. 265. In addition to alienation the condition was performed for the purpose of forfeiture, and so as to enable the grantee to create incumbrances (Co. Litt. 19 a).

(*d*) Co. Litt. 19 a. But though the heirs general were not admitted to inherit, it seems that in a grant limited to heirs of the body of the grantee by a particular spouse, the birth of such an heir would, on failure of issue in that line, let in other heirs of the body of the grantee; in other words, birth of issue of the special class changed the estate from tail special to tail general (Challis, Law of Real Property, 3rd ed., p. 267).

(*e*) *Willion* v. *Berkley, supra*; Co. Litt. 19 a. Apparently these limitations originated in grants to a grantee and his heirs, if he should have heirs of his body; and, in this form, the birth of an heir fulfilled the condition and left a fee simple absolute (Pollock and Maitland, History of English Law, Vol. II., p. 18). But the conditional fee, properly so called—to A. and the heirs of his body—did not for all purposes become a fee simple absolute, and in modern times the form just referred to—to A. and his heirs, if he shall have heirs of his body—has been treated as a fee simple on condition (Challis, Law of Real Property, 3rd ed., p. 267), or, if as a conditional fee, then as a conditional fee of a special type (2 Preston on Estates, 292).

(*f*) *Stafford* (*Earl*) v. *Buckley* (1750), 2 Ves. Sen. 170; 2 Bl. Com. 154.

(*g*) Challis, Law of Real Property, 3rd ed., p. 62; and see title COPYHOLDS, Vol. VIII., pp. 70 *et seq.*

SECT. 2. Modified Fees.

ancestor whose heir he is. This, it has been suggested, may be done where it is required that the descent shall be traced from the ancestor (*h*), and such an estate has been called a qualified fee simple (*i*). But probably the limitation only controls the original course of descent, and does not place any restriction on the power of alienation; thus, the owner for the time being can alienate like the owner of an estate in fee simple absolute, and vest a fee simple absolute in the alienee (*j*).

SUB-SECT. 3.—*Incidents of Estates.*

Powers of owners of fees upon condition and determinable fees.

327. There is no rule forbidding waste by the owner of an estate in fee simple which is liable to be determined for breach of condition or by virtue of a collateral limitation. Consequently, such an owner has the same rights of actual enjoyment as an owner in absolute fee simple, including the right to commit waste at his pleasure (*k*). He has also the same rights of alienation *inter vivos* or by will, save that the estate in the hands of his alienee is subject to determination in the same manner as in his own hands (*l*).

SECT. 3.—*Estate for Life.*

SUB-SECT. 1.—*For the Life of the Tenant.*

(i.) *How Arising.*

Nature of life estate.

328. An estate for life is an estate of mere freehold as distinguished from estates of inheritance (*m*). The estate may be for the life of the tenant or for the life or lives of other persons. These estates are known as an estate for life and an estate *pur autre vie*, respectively.

How created.

329. An estate for the life of the tenant arises (1) by express or implied limitation; (2) by operation of law, as in the case of tenant by the curtesy or in dower; and (3) by tenant in tail being reduced to the position of tenant for life in consequence of the possibility of issue in tail becoming extinct. The estates of tenant by the curtesy and tenant in dower are treated of subsequently (*n*).

(*h*) Littleton's Tenures, s. 354. Possibly the limitation must be to the heirs of the ancestor in the paternal line (Challis, Law of Real Property, 3rd ed., pp. 269, 277). In considering the effect of the limitation, account must be taken of the Inheritance Act, 1833 (3 & 4 Will. 4, c. 106), s. 4, and of the Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), s. 19. But such limitations, if not obsolete, are too rare to make it worth while to deal with them in detail here. They are fully dealt with in Challis, Law of Real Property, 3rd ed., ch. xix.; and see title DESCENT AND DISTRIBUTION, Vol. XI., pp. 8, 9.

(*i*) See Challis, Law of Real Property, 3rd ed., ch. xix.

(*j*) See *ibid.*, pp. 278—280, criticising Preston's view (1 Preston on Estates, 471) that the estate ranks as a determinable fee for the purpose of alienation; and see the text, *infra*.

(*k*) See *Bowles's* (*Lewis*) *Case* (1615), 11 Co. Rep. 79 b, 4th resolution.

(*l*) See Challis, Law of Real Property, 3rd ed., p. 262.

(*m*) See pp. 164, 165, *ante*; 2 Bl. Com. 104.

(*n*) See pp. 183, 189, *post*.

SECT. 3. **Estate for Life.**

By express grant.

330. An estate for life arises expressly where land is granted to a person for his life (*o*). If the estate is given for life, but without mentioning whose life, it is presumed to be for the life of the grantee (*p*), unless the grantor has only power to grant an estate for his own life, and then the estate is for the life of the grantor (*q*).

Determinable life estates.

An express estate for life may be limited so as to be determinable during the life on a specified event, such as a limitation to a woman during widowhood (*r*), and, although a clause merely prohibiting alienation is repugnant and void (*s*), yet the clause is effectual if it is expressed so as to make the estate determinable on bankruptcy or alienation (*t*).

Arising by implication.

331. An estate for life arises by implication where land is granted by deed to a person without specifying what estate he is to take, or without using words of limitation which are proper to confer an estate of inheritance, whether in fee simple or in fee tail (*a*). An estate for life may also arise by implication from the terms of a will in favour of a person to whom no estate is expressly devised (*b*), and, by way of resulting use, under limitations by way of use (*c*); but not under a deed (*d*).

Tenant in tail after possibility of issue extinct.

332. A *quasi*-estate for life arises in the case of a tenancy in tail after possibility of issue extinct where lands are limited in special tail (*e*), and one of the persons from whom the issue is to proceed dies without issue of the specified class. Thus, where land is given to a man and his wife and the heirs of their bodies, and one

(*o*) The proper place for limiting the estate is in the habendum. As to variations between limitations in the premises and in the habendum, see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 474.

(*p*) Co. Litt. 42 a. This is upon the ground that the deed is to be taken most strongly against the grantor, an estate for a man's own life being treated in law as greater than an estate for the life of another (*ibid.*; see titles DEEDS AND OTHER INSTRUMENTS, Vol. X., pp. 440, 441; LANDLORD AND TENANT, Vol. XVIII., p. 241, note (*p*)).

(*q*) Thus, if tenant in tail makes a lease for life, not under an express or statutory power, without expressing for whose life, this is for his own life (Co. Litt. 42 a, b).

(*r*) Co. Litt. 42 a.

(*s*) *Brandon* v. *Robinson* (1811), 18 Ves. 429; *Rochford* v. *Hackman* (1852), 9 Hare, 475; and see title GIFTS, Vol. XV., pp. 421—423.

(*t*) See cases cited in note (*s*), *supra*. A man cannot limit his own property to himself for life till bankruptcy (*Higinbotham* v. *Holme* (1812), 19 Ves. 88; see *Mackintosh* v. *Pogose*, [1895] 1 Ch. 505), but he can limit it to himself for life till alienation (*Brooke* v. *Pearson* (1859), 27 Beav. 181; *Knight* v. *Browne* (1861), 9 W. R. 515; *Re Perkins' Settlement Trusts, Leicester, Warren* v. *Perkins* (1912), 56 Sol. Jo. 412), or till it is taken in execution (*Re Detmold, Detmold* v. *Detmold* (1889), 40 Ch. D. 585); and see titles BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 147—150; FRAUDULENT AND VOIDABLE CONVEYANCES, Vol. XV., p. 86; GIFTS, Vol. XV., p. 423; and as to determinable life estates, see, also, titles GIFTS, Vol. XV., p. 423; SETTLEMENTS.

(*a*) See p. 166, *ante*.

(*b*) Where, for instance, a testator devises land to B. after the death of A., and B. is his heir-at-law (*Gardner* v. *Sheldon* (1671), Vaugh. 259; *Ralph* v. *Carrick* (1879), 11 Ch. D. 873, C. A.); and see title WILLS.

(*c*) See p. 278, *post*.

(*d*) *Gardner* v. *Sheldon*, *supra*; 1 Preston on Estates, p. 190.

(*e*) Littleton's Tenures, s. 34; see p. 243, *post*.

of the spouses dies without issue, the survivor is tenant in tail after possibility of issue extinct (*f*). Similarly, where land is given to a man and his heirs by a specified wife, the husband has a tenancy of this nature if the wife dies without issue by him (*g*). And, although in either case there are at first issue surviving, the tenant in tail becomes tenant after possibility of issue extinct upon the death of the issue without issue (*h*). But the law does not presume impossibility of issue merely from the great age of the parties or one of them (*i*). The estate cannot arise by express limitation or by the act of the parties, but only as the legal result of facts not depending on the will of the parties (*j*). In quantity it is the same as an estate for life (*k*), but in quality it retains the nature of an estate tail so far that the tenant is not punishable for waste except equitable waste (*l*).

(ii.) *Enjoyment.*

Liability for waste.

333. A tenant for life has the right to the full enjoyment (*m*) of the land during the continuance of his estate (*n*), subject to the duty of leaving it unimpaired for the remainderman; this duty is defined by the doctrine of waste (*o*). Waste is either voluntary, such as felling timber, opening mines, and pulling down houses; or permissive, such as allowing houses to fall into disrepair. A tenant for life is liable for voluntary waste (*p*), but not for permissive waste (*q*), unless his estate is expressly made subject to the condition of maintaining the premises (*r*).

(*f*) Littleton's Tenures, s. 32.

(*g*) *Ibid.*, s. 33.

(*h*) *Ibid.*, s. 32.

(*i*) Co. Litt. 28 a.

(*j*) *Bowles's* (*Lewis*) *Case* (1615), 11 Co. Rep. 79 b, 80 b, 3rd resolution. Thus, where land is given to a man and his wife and the heirs of their two bodies, and they are divorced, their estate of inheritance is turned into a joint estate for life (Co. Litt. 28 a).

(*k*) *Bowles's* (*Lewis*) *Case*, *supra*, 2nd resolution.

(*l*) *Bowles's* (*Lewis*) *Case*, *supra*, 2nd resolution; Co. Litt. 27 b, where other advantages of the tenancy are enumerated, but these are obsolete. Possibly his assignee is punishable for waste (Co. Litt. 28 a, note (6)). As to equitable waste, see p. 176, *post*; and as to the non-liability of a tenant in tail for waste, see note (*g*), p. 242, *post*.

(*m*) As to the rights of a tenant for life with regard to improvements, see title LAND IMPROVEMENT, Vol. XVIII., pp. 276, 277. As to his statutory rights, see *ibid.*, pp. 289 *et seq.*

(*n*) As to the duty of the tenant for life to keep down interest on incumbrances, see title SETTLEMENTS.

(*o*) Co. Litt. 53 a; and as to waste generally, see titles AGRICULTURE, Vol. I., pp. 295, 296; LANDLORD AND TENANT, Vol. XVIII., p. 496; and as to the liability of tenants for life for waste, and the property in the proceeds of waste, see title SETTLEMENTS. As to restraining waste, see title INJUNCTION, Vol. XVII., pp. 232, 233.

(*p*) At common law, liability for waste was incident only to life estates arising by operation of law, that is, dower and curtesy. The theory was that in estates otherwise arising the lessor or grantor should expressly provide against waste. But by the Statute of Marlbridge (1267), 52 Hen. 3, c. 23, lessees for life were made punishable for waste; see title LANDLORD AND TENANT, Vol. XVIII., p. 498, note (*b*).

(*q*) *Re Cartwright, Avis* v. *Newman* (1889), 41 Ch. D. 532. If, on a renewal of leaseholds, the tenant for life covenants as lessee to do repairs, he is liable for dilapidations if he neglects to perform the covenant (see *Marsh* v. *Wells* (1824), 2 Sim. & St. 87).

(*r*) *Woodhouse* v. *Walker* (1880), 5 Q. B. D. 404; and see title SETTLEMENTS.

SECT. 3. Estate for Life.

The tenant for life is allowed, however, to take timber necessary for the enjoyment and repair of the premises; that is, housebote, for the repair of the house and for fuel; ploughbote, for the making and repair of agricultural implements; and haybote, for the repair of fences. These are called estovers (*s*) and must be reasonable (*t*), and they can only be used for the actual repairs required. Timber cannot be cut in advance (*u*), or sold to pay the wages of men employed in the repairs (*a*), or in order to purchase other timber with the proceeds (*b*).

Estovers.

Equitable waste.

334. A tenant for life may, on the creation of his estate, be made dispunishable for waste. This is done by limiting the estate to him for life "without impeachment for waste" (*c*), and such exemption may be either general, or may exclude a particular kind of waste (*d*). He is then liable only in respect of the excepted waste, if any, and also in respect of such waste—known as equitable waste—as in the view of a court of equity (*e*) is not properly within the exemption, that is, the wanton destruction of houses and the felling of timber planted or left standing for ornament or shelter (*f*). A tenant in tail after possibility of issue extinct, though unimpeachable for waste (*g*), seems to be under the same restraint as regards equitable waste (*h*).

Custody of title deeds.

335. The legal tenant for life is entitled to the custody of the title deeds of the estate (*i*), but he may be deprived of them if the

(*s*) These rights must be distinguished from common of estovers; see title COMMONS AND RIGHTS OF COMMON, Vol. IV., pp. 466, 467; and see *ibid.*, p. 467, note (*s*).

(*t*) Co. Litt. 41 b, 53 b; and see title LANDLORD AND TENANT, Vol. XVIII., p. 429. The lessee for life may be restrained from taking estovers by special covenant (*ibid.*) This does not make the taking of estovers waste, but the lessor has his remedy on the covenant (*Anon.* (1561), Dyer, 198 b, (53)).

(*u*) *Gorges* v. *Stanfield* (1597), Cro. Eliz. 593.

(*a*) Bro. Abr., tit. Waste, pl. 112.

(*b*) Co. Litt. 53 b; *Simmons* v. *Norton* (1831), 7 Bing. 640.

(*c*) Littleton's Tenures, s. 352; Co. Litt. 220 a. As to the right of assignees of timber who claim under the tenant for life, see *Gordon* v. *Woodford* (1859), 27 Beav. 603.

(*d*) Thus the exception may exclude "waste in houses" (*Aston* v. *Aston* (1749), 1 Ves. Sen. 264, 265), or voluntary waste (*Garth* v. *Cotton* (1753), 1 Dick. 183); though the latter form of the clause—"without impeachment of waste, voluntary waste excepted"—would allow only permissive waste, and is needless, since for such waste the tenant for life is not liable (*Garth* v. *Cotton*, *supra*; and see *Wickham* v. *Wickham* (1815), 19 Ves. 419; *Vincent* v. *Spicer* (1856), 22 Beav. 380; p. 175, *ante*).

(*e*) There is now no legal right to commit equitable waste (Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (3)).

(*f*) *Vane* v. *Bernard* (*Lord*) (1717), 2 Vern. 738; *Rolt* v. *Somerville* (*Lord*) (1737), 2 Eq. Cas. Abr. 759; *Aston* v. *Aston* (1749), 1 Ves. Sen. 264, 265; *Ford* v. *Tynte* (1864), 2 De G. J. & Sm. 127, C. A.; and see title EQUITY, Vol. XIII., p. 49.

(*g*) See p. 175, *ante*.

(*h*) *A.-G.* v. *Marlborough* (*Duke*) (1818), 3 Madd. 498, 538; see *Abraham* v. *Bubb* (1680), 2 Eq. Cas. Abr. 757; 2 Swan. 172; *Cooke* v. *Whaley* (1702), 1 Eq. Cas. Abr. 400.

(*i*) *Strode* v. *Blackburne* (1796), 3 Ves. 222, 225; *Garner* v. *Hannyngton* (1856), 22 Beav. 627; *Leathes* v. *Leathes* (1877), 5 Ch. D. 221; and see

safety of the deeds is endangered by his misconduct (*k*), or where a suit is pending and is being actively prosecuted, and it is more convenient for the purposes of the suit that the deeds should be in court or with trustees (*l*).

Emblements.

336. Where a tenant for life has sown the land for crops which usually repay the sowing within the year, and dies before he has obtained the advantage of his expense and labour, his personal representatives are entitled to take the crops as emblements (*m*); but he is not entitled to emblements if his estate determines in his lifetime by his own act (*n*).

Fixtures.

337. On the death of the tenant for life his personal representatives are entitled to all articles brought on the premises by him which have not been attached to the land so as to become part of it; and, although the articles have become so attached and are fixtures, yet, if they have been affixed by the tenant for life for the more convenient or luxurious occupation of the premises, or for the purposes of trade, the personal representatives may remove them, provided the removal can be effected without substantial damage to the premises (*o*).

(iii.) *Alienation.*

Power of alienation.

338. Save under statutory powers, the tenant for life can dispose of the land only to the extent of his own interest. Hence, on a sale or gift of the land, whether expressed to be for the life of the tenant for life or any greater interest, the purchaser or donee takes an estate only for the rest of the life of the tenant for life (*p*), that is,

p. 239, *post*. As to the right of an equitable tenant for life to the custody of title deeds, see title SETTLEMENTS.

(*k*) *Leathes* v. *Leathes* (1877), 5 Ch. D. 221.

(*l*) *Stanford* v. *Roberts* (1871), 6 Ch. App. 307; *Leathes* v. *Leathes*, *supra*; and see *Webb* v. *Lymington* (*Lord*), *Webb* v. *Webb* (1757), 1 Eden, 8; *Duncombe* v. *Mayer* (1803), 8 Ves. 320; *Jenner* v. *Morris* (1866), 1 Ch. App. 603.

(*m*) Co. Litt. 55 b. The sowing must be by or at the expense of the tenant for life himself (*Grantham* v. *Hawley* (1616), Hob. 132; 9 Vin. Abr., 369, tit. Emblements (17)). As to what crops are emblements, and as to emblements generally, see titles AGRICULTURE, Vol. I., p. 282; EXECUTORS AND ADMINISTRATORS, Vol. XIV., pp. 218, 219; LANDLORD AND TENANT, Vol. XVIII., p. 565.

(*n*) Where, *e.g.*, a widow, who holds during widowhood, remarries (*Oland's Case* (1602), 5 Co. Rep. 116 a; Co. Litt. 55 b).

(*o*) Apparently the right of removal is the same between personal representatives of a tenant for life and remainderman as between landlord and tenant; see the cases cited in title LANDLORD AND TENANT, Vol. XVIII., p. 421, note (*f*); and, as to the removal of fixtures by personal representatives of a tenant for life, see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., pp. 220, 221. As to fixtures generally, see title LANDLORD AND TENANT, Vol. XVIII., pp. 416 *et seq.*

(*p*) When a feoffment could have a tortious operation, a feoffment in fee by a tenant for life passed the fee simple (Littleton's Tenures, s. 611), and was a forfeiture of his estate, giving the remainderman a right of entry (Littleton's Tenures, ss. 415, 416; Co. Litt. 327 b). A feoffment by a tenant in tail (Littleton's Tenures, s. 599) had a greater effect, since it caused a discontinuance and put the issue to his action, that is, on the death of the tenant in tail the issue could not enter, but had to bring a real action,

SECT. 3. **Estate for Life.**

an estate *pur autre vie* (*q*); and, on a lease of the land, the lessee takes a term which is liable to be determined by the death of the lessor (*r*). Under statutory powers, the tenant for life can dispose of the land by sale, exchange, partition, or lease; but any capital sum received on such transaction is paid to trustees or into court and follows the limitations of the land (*s*).

SUB-SECT. 2.—*Pur Autre Vie.*

(i.) *How Arising.*

Nature of estates *pur autre vie.*

339. Land may be held by the tenant for the term of another man's life, or for the term of several concurrent lives, and, in the latter case, for the term of the joint lives or of the life of the survivor (*t*). A term which is intended to be for the joint lives must be expressly so limited, otherwise it will be also for the life of the survivor (*a*). The estate of the tenant is an estate of freehold (*b*), and is called an estate *pur autre vie*; the person whose life measures the estate is called the *cestui que vie* (*c*).

How created.

340. An estate *pur autre vie* may arise (1) by express limitation, and (2) by assignment of an existing life estate. It arises by express limitation when the grant is to the tenant for the specified life or lives. The addition to the name of the tenant of words purporting to carry the estate on his death to his heirs

formedon in descender; in the case of default of issue, the remainderman had his *formedon in reverter* (Littleton's Tenures, ss. 595, 597). But a grant of a life estate by deed, which might be made where the land was in the occupation of a tenant for years, had no tortious effect, and only passed the life estate (Littleton's Tenures, s. 609). A feoffment, like a grant, has now no tortious operation (Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 4; p. 291, *post*). Hence, a conveyance by a tenant for life, in whatever form made, does not now operate to pass more than his interest, and does not cause a forfeiture. Formerly there was a distinction between tenant in tail after possibility of issue extinct and his assignee as to attornment to the remainderman (*Ap-Rice's Case* (1590), 3 Leon. 241).

(*q*) See the text, *infra*.

(*r*) See title LANDLORD AND TENANT, Vol. XVIII., p. 359.

(*s*) See titles LANDLORD AND TENANT, Vol. XVIII., pp. 358 *et seq.*; SETTLEMENTS.

(*t*) Littleton's Tenures, s. 56; Co. Litt. 41 b; Challis, Law of Real Property, 3rd ed., p. 356. There may be an estate to A. for the term of his own life and the lives of B. and C. (Co. Litt. 41 b). On the death of A. in the lifetime of B. and C. or either of them the estate does not determine, but continues, if A. has assigned it, in favour of the assignee, and otherwise in favour of a special or general occupant, until the death of the survivor of B. and C. (*Utty Dale's Case* (1590), Cro. Eliz. 182; *Rosse's Case* (1598), 5 Co. Rep. 13 a; see *Brudnel's Case* (1592), 5 Co. Rep. 9 a). Ordinarily an estate for a man's own life is greater than an estate for the life of another, and hence an estate to A. for the lives of A., B. and C. would be an estate for the life of A. only; but in this case the usual rule does not apply (Co. Litt. 41 b; and see p. 174, *ante*). An estate *pur autre vie* may also be limited for the life of a person and the life of his heir (*Re Amos, Carrier* v. *Price*, [1891] 3 Ch. 159).

(*a*) *Brudnel's Case, supra*; *Rosse's Case, supra*; see *Chatfield* v. *Berchtoldt* (1872), 7 Ch. App. 192, where the estate was expressly so limited.

(*b*) See *Doe* d. *Blake* v. *Luxton* (1795), 6 Term Rep. 289, 292.

(*c*) See Co. Litt. 41 b.

does not alter the quantum of the estate, though it affects the beneficial interest therein after his death (*d*). Moreover, the technical nature of the estate is the same whether it is granted by way of conventional lease at a rent (*e*), or whether it is created by way of settlement (*f*). In either case the seisin is in the tenant, but in the former case the lessor reserves the succeeding estate to himself as his reversion, and to this the rent is incident; in the latter the succeeding estate is either a remainder or reversion.

An estate *pur autre vie* also arises when a tenant for his own life assigns his estate to another (*g*); the assignee is then tenant *pur autre vie*, and the assignor becomes the *cestui que vie* (*h*). The estate thus assigned may be either an estate originally created for life, or an estate for life arising by operation of law, such as a tenancy in dower (*i*).

(ii.) *Enjoyment.*

341. A tenant *pur autre vie* has the same rights of enjoyment as tenant for his own life (*k*); he is entitled, generally, to use the land as he pleases, subject to the restrictions imposed by the doctrine of waste (*l*), and he has the same right, notwithstanding waste, to take estovers (*m*). But his enjoyment of the land may be restrained by special agreement (*n*), and, in the case of conventional leases for lives at a rent, the lessee's covenants are usually similar to those in a corresponding lease for years (*o*). In the case where the tenancy arises under a settlement, the tenant takes the rents and profits, and has special statutory powers of disposing of the land (*p*). Rights of enjoyment.

(iii.) *Alienation Inter Vivos.*

342. A tenant *pur autre vie*, whether the estate is limited to him alone, or to him and his heirs, or his executors or administrators, has an absolute power of alienation during his life (*q*), and upon his Rights of alienation.

(*d*) See p. 180, *post.*

(*e*) For a form of such a lease, see Encyclopædia of Forms and Precedents, Vol. VII., p. 272.

(*f*) See Challis, Law of Real Property, 3rd ed., p. 356.

(*g*) Co. Litt. 41 b.

(*h*) Challis, Law of Real Property, 3rd ed., p. 357. An assignment by a tenant in tail after possibility of issue extinct creates an estate *pur autre vie* (*ibid.*; 3 Preston on Conveyancing, 171, 172).

(*i*) Co. Litt. 41 b.

(*k*) See p. 175, *ante.*

(*l*) Co. Litt. 41 b; *Seymor's Case* (1612), 10 Co. Rep. 95 b, 98 a.

(*m*) Co. Litt. 41 b; *Seymor's Case, supra.* The tenant *pur autre vie* does not, it seems, forfeit his right to emblements by holding over after the death of the *cestui que vie* (*Kelly* v. *Webber* (1860), 11 I. C. L. R. 57, 61).

(*n*) Co. Litt. 41 b; *Seymor's Case, supra.*

(*o*) See Encyclopædia of Forms and Precedents, Vol. VII., p. 272.

(*p*) A tenant for the life of another, not holding merely under a lease at a rent, has, when his estate is in possession, the powers of a tenant for life under the Settled Land Acts (Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 58 (1) (v.)); see title SETTLEMENTS).

(*q*) Co. Litt. 41 b. This is so, although the estate *pur autre vie* is limited to the grantee and the heirs of his body (*Doe* d. *Blake* v. *Luxton* (1795), 6 Term Rep. 289, 292).

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death the estate of his assignee does not determine, but he continues to hold for the remainder of the life of the *cestui que vie* in the same manner in all respects and subject to the same incidents as the assignor held (*r*).

(iv.) *Devolution on Death.*

Devolution at common law.

343. At common law an estate *pur autre vie* was not devisable (*s*), nor, although the heirs of the tenant were mentioned in the grant, did the heir take by descent (*t*). But since the land was granted away for the whole life of the *cestui que vie*, and the freehold must not be vacant, the estate was filled up by means of the doctrine of occupancy (*u*). If the heirs were named in the grant, this was not by way of limitation of the estate, but as a nomination of an occupant after the death of the grantee. The heir was thereupon entitled to enter and hold for the remainder of the life of *cestui que vie*, and he was called the special occupant (*v*); but, since he did not take by descent (*w*), the land in his hands was not assets for the payment of

Special occupant.

(*r*) *Utty Dale's Case* (1590), Cro. Eliz. 182. An estate *pur autre vie* may be limited by way of remainder (*Wastneys* v. *Chappell* (1714), 3 Bro. Parl. Cas. 50), which, although contingent, does not, in the case of copyholds and leaseholds, require any prior estate to support it (*Pickersgill* v. *Grey* (1853), 30 Beav. 352); and a remainderman, if not barred, takes as special occupant (*Allen* v. *Allen* (1842), 2 Dr. & War. 307, 325). It cannot, however, be entailed, though a *quasi*-entail may be effected (*Allen* v. *Allen, supra*; *Pickersgill* v. *Grey, supra*; *Re Barber's Settled Estates* (1881), 18 Ch. D. 624, 628), which may be barred by deed and otherwise (*Grey* v. *Mannock* (1765), 2 Eden, 339; *Lynch* v. *Nelson* (1870), 5 I. R. Eq. 192), but not by will (*Blake* v. *Blake* (1786), 1 Cox, Eq. Cas. 266; *Doe* d. *Blake* v. *Luxton* (1795), 6 Term Rep. 289, 292; *Campbell* v. *Sandys* (1803), 1 Sch. & Lef. 281; *Hopkins* v. *Ramage* (1826), Batt. 365; *Cresswell* v. *Hawkins* (1857), 3 Jur. (N. S.) 407; *Walsh* v. *Studdert* (1871), 5 I. R. C. L. 478; *Morris* v. *Morris* (1872), 6 I. R. C. L. 73; *Re Barber's Settled Estates, supra*). The power of alienation by successive takers is regulated by analogy to the rules governing similar limitations of an estate in fee simple. Thus, an executory devise cannot be defeated by a prior tenant in *quasi*-fee simple (*Re Barber's Settled Estates, supra*); and where such a tenant conveys his whole legal interest to trustees upon trusts which fail, there is a resulting trust of the beneficial interest to him, or to his heirs as special occupants (*Northen* v. *Carnegie* (1859), 4 Drew. 587).

(*s*) *Re Inman, Inman* v. *Inman*, [1903] 1 Ch. 241, 246.

(*t*) *Seymor's Case* (1612), 10 Co. Rep. 95 b, 98 a; *Doe* d. *Blake* v. *Luxton, supra*, at p. 291. Consequently the estate is not an estate of inheritance (*ibid.*), and there is no dower (*Low* v. *Burron* (1734), 3 P. Wms. 262, 263; *Re Michell, Moore* v. *Moore*, [1892] 2 Ch. 87, 97), or curtesy (*Stead* v. *Platt* (1853), 18 Beav. 50), out of it.

(*u*) Challis, Law of Real Property, 3rd ed., p. 359. There may be a special occupant of an equitable estate *pur autre vie* (*Reynolds* v. *Wright* (1860), 2 De G. F. & J. 590), but there cannot be a general occupant of an incorporeal hereditament (*Northen* v. *Carnegie, supra*).

(*v*) *Northen* v. *Carnegie, supra*, at p. 590; and, similarly, the heir takes although the limitation is to the heirs, executors, administrators, and assigns (*Atkinson* v. *Baker* (1791), 4 Term Rep. 229). In a deed the special occupant must be expressly designated, but in a will the intention of the testator is enough (*Re Sheppard, Sheppard* v. *Manning*, [1897] 2 Ch. 67).

(*w*) Similarly, where an estate *pur autre vie* is limited to the grantee and the heirs of his body with remainders over, no true entail is created, but, if the tenant for the time being does not alienate in his lifetime, the heirs of the body and remaindermen in succession take as special occupants (*Low* v. *Burron, supra*; *Re Michell, Moore* v. *Moore, supra*); and see *Allen* v.

the tenant's debts (*a*). If the heir was not named in the grant, then, if the possession was vacant, any person might enter and clothe himself with the freehold as general occupant (*b*); if a tenant or other person was in possession, he became the freeholder by the same title (*c*); in either case the general occupant took without liability to pay the deceased tenant's debts (*d*).

General occupant.

344. By virtue of the Wills Act, 1837 (*e*), an estate *pur autre vie* can be disposed of by will, whether there is or is not any special occupant, and whether it is of freehold, customary, or copyhold tenure, and whether the subject of the estate is a corporeal or an incorporeal hereditament (*f*). If no testamentary disposition is made, and if the estate comes to the heir as special occupant, it is chargeable in his hands as assets; but if there is no special occupant, it goes to the personal representatives of the tenant, and is assets in their hands and is distributable as personal estate (*g*). In the case, however, of the death of a tenant since the 1st January, 1898 (*h*), an estate *pur autre vie*, whether disposed of by will or not, devolves upon the personal representatives as though it were a chattel real, and is applicable, like other real estate in their hands, as assets for the payment of debts; although this does not disturb the beneficial interest in the property nor vary the order in which, as between real and personal estate, it is liable for payment of debts. Accordingly, where the heir is entitled as special occupant, he takes the land beneficially, subject to its liability for debts in case of the deficiency of the personal estate; and, apparently, a devisee takes it in the

Under the Wills Act, 1837.

Allen (1842), 2 Dr. & War. 307, 325; *Re Whitsitt's Estate* (1851), 1 I. C. L. R. 633; *Re Mahon's Estate* (1851), 1 I. C. L. R. 567; *M'Clenaghan* v. *Bankhead* (1873), 8 I. R. C. L. 195.

(*a*) *Doe* d. *Blake* v. *Luxton* (1795), 6 Term Rep. 289, 291; and see title DESCENT AND DISTRIBUTION, Vol. XI., p. 13.

(*b*) Co. Litt. 41 b.

(*c*) 1 Preston on Estates, 259; Challis, Law of Real Property, 3rd ed., p. 359; and as to occupancy in the case of copyholds, see *ibid.*

(*d*) The heir was liable on bond debts, if he was named in the bond, to the extent of assets, but against a general occupant there was no cause of action at all.

(*e*) 7 Will. 4 & 1 Vict. c. 26.

(*f*) *Ibid.*, s. 3.

(*g*) *Ibid.*, s. 6; and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 231. These statutory provisions replace the Statute of Frauds (29 Car. 2. c. 3), s. 12, which made estates *pur autre vie* devisable, and charged them as assets in the hands of the heir as special occupant, or, if there was no special occupant, in the hands of the executors or administrators; and stat. (1740) 14 Geo. 2, c. 20, s. 9, which deprived the executors or administrators of the beneficial interest in the surplus (see *Oldham* v. *Pickering* (1696), 2 Salk. 464), and made it distributable as personal estate. But the estate remains realty (*Chatfield* v. *Berchtoldt* (1872), 7 Ch. App. 192, 198), and the personal representatives take it as an estate of freehold (*Oldham* v. *Pickering, supra;* see S. C., Carth. 376). A devisee does not take as occupant, but by his title under the will. On the death of the grantee *pur autre vie* of a rentcharge during the life of the *cestui que vie*, it goes to his executors, although executors are not named in the grant (*Bearpark* v. *Hutchinson* (1830), 7 Bing. 178; *Chatfield* v. *Berchtoldt, supra;* and see *Rawlinson* v. *Montague* (*Duchess*) (1710), 3 P. Wms. 264, n. (D)).

(*h*) See the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1.

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same way; but if there is no devise, and if the heir does not take as special occupant, the land becomes for all purposes personal estate (*i*).

Effect of assignment on devolution.

345. Where upon an assignment or devise of an estate *pur autre vie* the limitation is to the assignee and his heirs, or the devisee and his heirs, the heir takes as special occupant, although the original grant of the estate did not mention heirs (*k*); but the mere description of the estate as freehold, or an indication of an intention that it shall go as freehold, is not for this purpose equivalent to the mention of heirs (*l*); and the mention of heirs in the assignment of the legal estate to trustees does not supply the omission of the word in the estate of the *cestui que trust* (*m*).

(v.) *Determination.*

Production of *cestui que vie.*

346. Any person having any claim in remainder, reversion, or expectancy may, upon affidavit that he has cause to believe that the *cestui que vie* is dead, and that his death is concealed, obtain an order of the High Court for his production by the tenant *pur autre vie* or his assignee (*n*); and if such order is not complied with, the *cestui que vie* is taken to be dead, and any person claiming any interest in remainder, or reversion, or otherwise may enter accordingly (*o*).

(*i*) There appears to be no decision on the relative liability of estates *pur autre vie* and personal estate to payment of debts; but it seems that in favour of the heir taking as special occupant, and of a devisee, they must rank as real estate. As to the order of application of assets, see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., pp. 285 *et seq.*

(*k*) *Re Michell, Moore* v. *Moore*, [1892] 2 Ch. 87, 96. Sir E. COKE accordingly recommended an assignment to trustees and their heirs, so as to prevent general occupancy, where the mention of heirs had been originally omitted (Co. Litt. 41 b).

(*l*) *Re Inman, Inman* v. *Inman*, [1903] 1 Ch. 241, distinguishing *Philpotts* d. *Philpotts* v. *James* (1784), 3 Doug. 425, and not following *Wall* v. *Byrne* (1845), 2 Jo. & Lat. 118; *Re King, King* v. *King*, [1898] 1 I. R. 91; affirmed, [1899] 1 I. R. 30, C. A.

(*m*) *Mount-Cashell* (*Earl*) v. *More-Smyth*, [1896] A. C. 158. And as to devolution of estates *pur autre vie*, see title DESCENT AND DISTRIBUTION, Vol. XI., pp. 12, 13.

(*n*) *Re Hall, Ex parte Castledine* (1881), 44 L. T. 469; *Re Pople, Ex parte Baker* (1889), 40 Ch. D. 589.

(*o*) Cestui que Vie Act, 1707 (6 Anne, c. 72). Remaindermen may apply notwithstanding that, in certain events, they are not immediately entitled on the death of the tenant for life (*Ex parte Grant* (1801), 6 Ves. 512). The order states the place at which, the time when, and the person before whom the *cestui que vie* is to be produced (*Ex parte St. Aubyn* (*Sir John*) (1793), 2 Cox, Eq. Cas. 373; *Ex parte Whalley* (1828), 4 Russ. 561; *Re Lingen* (1841), 12 Sim. 104; *Re Clossey* (1854), 2 Sm. & G. 46; *Re Pople, Ex parte Baker, supra;* 2 Seton, Judgments and Orders, 7th ed., p. 1713). It appears that it is not necessary for the affidavit required by the statute to contain a statement that the death is concealed from the applicant (*Re Dennis's Will* (1860), 7 Jur. (N. S.) 230). The order for production will be made if the remainderman gives notice to the person in possession to produce the *cestui que vie* under the statute, and the notice is not complied with (*Re Owen* (1878), 10 Ch. D. 166). In default of production, a further order is made for production before commissioners or to the court (*Re Lingen, supra; Re Pople, Ex parte Baker, supra;* 2 Seton,

Holding over.

347. A tenant *pur autre vie* who holds over after the death of the *cestui que vie*, without the express consent of the persons next entitled, becomes a trespasser and can be proceeded against accordingly (*p*).

Burden of proof.

348. The burden of proving that the *cestui que vie* is dead lies on the person next entitled. In the absence of direct evidence of death, the proof may be assisted by presumption of death (*q*).

SECT. 4.—*Estate by the Curtesy.*

SUB-SECT. 1.—*Nature and Condition of Estate.*

Nature of estate by the curtesy.

349. Curtesy is the right of a husband to an estate for his life, expectant on the death of his wife, in the entirety of lands and hereditaments of the wife (*r*) of which she is seised for an estate of inheritance (*s*), subject to his having issue by her born alive who are capable of inheriting the property from her (*t*). If the property is subject to the custom of gavelkind (*u*), the curtesy is of a moiety only, the birth of issue is not necessary, and the estate ceases on the husband's remarriage (*v*). As regards tenure, tenant by the curtesy holds of the heir (*a*).

Property in which curtesy is enjoyed.

350. Curtesy may exist both in land (*b*) and in incorporeal real hereditaments which can be the subjects of estates of inheritance,

Judgments and Orders, 7th ed., p. 1713); and, if this is not complied with, a final order is made that the *cestui que vie* is to be deemed to be dead (*Re Pople, Ex parte Baker* (1889), 40 Ch. D. 589; 2 Seton, Judgments and Orders, 7th ed., p. 1713). As to extending the time for production, see *Re St John's Hospital* (1868), 18 L. T. 317. The court cannot give the tenant *pur autre vie* the costs of producing the *cestui que vie* (*Re Isaac* (1838), 4 My. & Cr. 11); nor will it give the applicant his costs, at any rate if the respondent had good reason for requiring him to come before the court (*Re Pople, Ex parte Baker, supra*, at p. 593). The statute applies in cases where the title of the remainderman depends on the death of the *cestui que vie* without issue (*Re Pople, Ex parte Baker, supra*; see *Ex parte Grant* (1801), 6 Ves. 512); to cases where the estate is for ninety-nine years if the *cestui que vie* so long lives (*Ex parte Grant, supra*); and to cases where the person in possession has any interest determinable on a life—such as permissive occupation—although not an estate *pur autre vie* strictly so called (*Re Stevens* (*Thomas*) (1886), 31 Ch. D. 320); and as to procedure, see, further, Daniell's Chancery Practice, 7th ed., p. 1886. The remainderman has of course to give up possession to the tenant *pur autre vie* if, after the order is made, the *cestui que trust* proves to be alive (*Re Pople, Ex parte Baker, supra*, at p. 592).

(*p*) Cestui que Vie Act, 1707 (6 Anne, c. 72), s. 5.

(*q*) See *Prudential Assurance Co.* v. *Edmonds* (1877), 2 App. Cas. 487; *Re Owen* (1878), 10 Ch. D. 166; *Re Clossey* (1854), 2 Sm. & G. 46. The order has been made on evidence of incurable illness of the *cestui que vie* when last heard of (*Re Dennis's Will* (1860), 7 Jur. (N. S.) 230). As to presumption of death, see title EVIDENCE, Vol. XIII., pp. 500 *et seq.*

(*r*) As to the effect of marriage upon property generally, see title HUSBAND AND WIFE, Vol. XVI., pp. 321 *et seq.*

(*s*) An estate *pur autre vie* is not an estate of inheritance; see note (*t*), p. 180, *ante*.

(*t*) Littleton's Tenures, ss. 35—52.

(*u*) See pp. 151 *et seq.*, *ante*.

(*v*) Co. Litt. 30 a; Bac. Abr., tit. Gavelkind, A; Robinson, Gavelkind, 5th ed., p. 128; *Browne* v. *Brokes* (1659), 2 Sid. 153. As to curtesy in copyholds, see title COPYHOLDS, Vol. VIII., p. 78.

(*a*) Co. Litt. 54 a; *Paine's Case* (1587), 8 Co. Rep. 34 a, 36 a.

(*b*) Tenancy by the curtesy exists also in equitable estates (see title

SECT. 4. **Estate by the Curtesy.**

such as rents and advowsons (*c*); but not in a mere right, title or condition, or in a personal hereditament (*d*). It may exist in property limited to the separate use of the wife (*e*), and in statutory separate property (*f*), notwithstanding a restraint on anticipation (*g*), unless the right is barred by a disposition of the wife (*h*).

Necessity of wife's seisin.

351. In the case of land, it is necessary that the wife shall obtain seisin in deed, that is, that she shall enter (*i*); seisin in law is not sufficient (*k*): but this rule has been departed from where the nature of the wife's title is such that it could not, during her lifetime, be clothed with seisin in deed (*l*). In the case of incorporeal

EQUITY, Vol. XIII., p. 95, note (*e*), and cases there referred to; *Chaplin* v. *Chaplin* (1734), 3 P. Wms. 229, 234); and in money notionally converted into real estate (see title EQUITY, Vol. XIII., p. 107). Possession by the wife ranks as equitable seisin so as to make the estate attach (*Parker* v. *Carter* (1844), 4 Hare, 400). Where an equitable estate for life and also an equitable remainder in fee are vested in the wife with an intervening power of appointment in her which is not exercised, she has an estate of inheritance on which curtesy attaches (*Follett* v. *Tyrer* (1844), 14 Sim. 125; see *Pitt* v. *Jackson* (1786), 2 Bro. C. C. 51; *Roberts* v. *Dixwell* (1738), 1 Atk. 607; but see, *contra*, *Hearle* v. *Greenbank* (1749), 3 Atk. 696). But the husband is not allowed curtesy in an equitable estate or interest contrary to the express provisions of the trust (*Bennet* v. *Davis* (1725), 2 P. Wms. 316, where a devise to a wife for her separate use expressly excluded the husband's curtesy; the husband was tenant by the curtesy at law but held as trustee for the wife's heir-at-law), or to the clear intention of the settlor (see *Steadman* v. *Palling* (1746), 3 Atk. 423).

(*c*) Co. Litt. 29 a. If the rent is reserved on a grant in tail by the woman before marriage, the husband's curtesy is liable to cease by the determination of the estate tail (Co. Litt. 30 a; compare Co. Litt. 32 a).

(*d*) Co. Litt. 29 a; 7 Vin. Abr. 160.

(*e*) *Appleton* v. *Rowley* (1869), L. R. 8 Eq. 139; *Eager* v. *Furnivall* (1881), 17 Ch. D. 115. *Moore* v. *Webster* (1866), L. R. 3 Eq. 267, is overruled. As to property limited to the separate use of a wife, see, generally, title HUSBAND AND WIFE, Vol. XVI., pp. 341 *et seq.*

(*f*) *Hope* v. *Hope*, [1892] 2 Ch. 336; *Re Lambert's Estate*, *Stainton* v. *Lambert* (1888), 39 Ch. D. 626 (separate property under the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75)). As to such property, see title HUSBAND AND WIFE, Vol. XVI., pp. 348 *et seq.*

(*g*) *Cooper* v. *Macdonald* (1877), 7 Ch. D. 288, C. A.; see *Morgan* v. *Morgan* (1820), 5 Madd. 408; and as to the general effect of such restraint, see title HUSBAND AND WIFE, Vol. XVI., pp. 363 *et seq.*

(*h*) See p. 298, *post*.

(*i*) Co. Litt. 29 a; *Doe* d. *Andrew* v. *Hutton* (1804), 3 Bos. & P. 643; *R.* v. *Great Faringdon* (*Inhabitants*) (1796), 6 Term Rep. 679. For a suggestion that the requirement of actual seisin was, in principle, abolished by the change in the law of descent under which descent is now traced, not from the person last seised, but from the last purchaser, see Challis, Law of Real Property, 3rd ed., p. 343.

(*k*) Co. Litt. 29 a. Nor is it sufficient to obtain judgment in an action for the recovery of the land, if execution is stayed and the defendant remains in possession until the death of the wife (*Parks* v. *Hegan*, [1903] 2 I. R. 643, where a father granted land to his daughter in fee, but remained in possession; the daughter married and had a son, and she brought an action for the recovery of the land against the father: by consent, judgment was entered for her, with a stay of execution during the father's life, and she died while he was still in possession: held, no sufficient actual seisin to entitle the daughter's husband to curtesy, notwithstanding the judgment).

(*l*) *E.g.*, where there is a devise to a daughter in fee or in tail and she predeceases the testator leaving issue, the devise takes effect by virtue of

hereditaments in gross, seisin in deed is necessary, if there has been an opportunity of obtaining it; but, if the wife dies before an instalment of a rentcharge becomes due, or an advowson falls vacant, seisin in law is sufficient (*m*), although, if the rent is incident or the advowson appendant to a manor, seisin in deed of the manor is necessary to create the curtesy in them (*n*).

Reversions and remainders.

352. Inasmuch as seisin by the wife is necessary, there is no curtesy of a reversion or remainder expectant on a freehold interest which does not fall into possession during the marriage (*o*); but, since the possession of a tenant for years gives seisin in deed to the reversioner, the existence of a term of years does not prevent curtesy (*p*).

Joint tenancy and tenancy in common.

353. The wife must be solely seised of the hereditaments or of an undivided share in them (*q*); thus curtesy attaches to a hereditament held by the wife as tenant in common or coparcener (*r*), but not where she is joint tenant (*s*). The entry of one tenant in common or coparcener is deemed to be the entry of all for the purpose of giving a title to curtesy (*t*).

How divested.

354. Any event which divests the estate of the wife divests also the estate by curtesy of the husband; but it will revive if the estate of the wife revests and she re-enters (*u*). If, however, the

the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 33 (see title WILLS), and if she has not barred the right by a valid testamentary disposition the husband is entitled to curtesy (*Eager* v. *Furnivall* (1881), 17 Ch. D. 115; *Re Derbyshire, Webb* v. *Derbyshire* (1905), 75 L. J. (CH.) 95).

(*m*) Co. Litt. 29 a.

(*n*) Co. Litt. 29 a, note (1).

(*o*) Co. Litt. 29 a. While the estate is a remainder, the husband has no contingent interest which will pass to his trustee in bankruptcy, notwithstanding that issue have been born (*Gibbins* v. *Eyden* (1869), L. R. 7 Eq. 371). A life estate in possession to the wife, with contingent remainders, followed by an ultimate reversion to her in fee, gives curtesy if the contingent remainders do not take effect, since the life estate and the reversion in fee unite (*Hooker* v. *Hooker* (1734), Lee *temp.* Hard. 13; *Doe* d. *Planner* v. *Scudamore* (1800), 2 Bos. & P. 289, 294); but not if they take effect (*Boothby* v. *Vernon* (1723), 9 Mod. Rep. 147, where an estate for life was limited to the wife, with remainders to her first and other sons successively in tail male; the reversion in fee simple descended on the wife as heiress-at-law, and she died leaving a son: held, that the husband was not entitled to curtesy); and see Fearne, Contingent Remainders, pp. 341 *et seq.*

(*p*) Co. Litt. 29 a, note (1); p. 215, *post.* It is immaterial that no rent was received before the wife's death (*De Grey* v. *Richardson* (1747), 3 Atk. 469).

(*q*) *Doe* d. *Neville* v. *Rivers* (1797), 7 Term Rep. 276.

(*r*) Littleton's Tenures, s. 45; Co. Litt. 174 b, 183 a; *Palmer* v. *Rich*, [1897] 1 Ch. 134, 141.

(*s*) Littleton's Tenures, s. 283; *Palmer* v. *Rich, supra,* at p. 140.

(*t*) *Sterling* v. *Penlington* (1740), 7 Vin. Abr. 149, 150 (11).

(*u*) Where, for instance, the seisin of the wife is superseded by the birth and entry of her brother, a posthumous child, who subsequently dies without issue and intestate (Bro. Abr., tit. Curtesy, 249 b (13)). A re-entry against the wife for breach of condition determines her estate, and, therefore, also the estate of her husband (see 2 Bl. Com. 155; and see p. 169, *ante*).

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wife's own seisin is not disturbed, the husband has his estate by the curtesy, notwithstanding that her fee is defeated after her death by an executory limitation (*a*).

Necessity of birth of issue.

355. As soon as a child capable of inheriting (*b*) is born, the husband acquires a vested interest in his estate by the curtesy, and this is not divested by the subsequent death of the child (*c*), whether during the wife's life or after her death (*d*). The issue must be born alive (*e*) during the marriage (*f*); and this may be either before or after the wife is entitled to or seised of the property (*g*).

Issue capable of inheriting.

356. The issue must be capable of inheriting the property from the wife by descent. If the wife is seised in fee simple or in tail general and has issue by her first husband, a second husband is nevertheless entitled to curtesy on issue being born to her by him, because the issue by the first husband might die (*h*). But in the case of an estate in special tail, that is to say, limited to the wife and the heirs of her body by a particular husband, no other husband than the husband specified can in any circumstances be entitled to curtesy (*i*). If an estate is limited to the wife and the heirs male of her body, the child, to entitle the husband to curtesy, must be a son, and if to the heirs female of her body, must be a daughter (*k*).

(*a*) *Buckworth* v. *Thirkell* (1785), 3 Bos. & P. 652, n. (devise to trustees in trust for A. in fee on her attaining twenty-one or marrying, but in case she died before attaining twenty-one, and without leaving issue, over; A. married, had a child, which died, and then died under twenty-one without leaving issue: held, that the husband was entitled to curtesy) *Sammes* v. *Paynes* (1588), 1 Leon. 167 (grant to wife in tail, on condition that she should pay, within a year after the death of the grantor, or within a year after the wife's sister should attain eighteen, to the sister £300, and on failure to make the payment, then to the sister in tail; the wife had issue, and died without leaving issue, before the period arrived for payment of the £300: held, that the husband was entitled to curtesy); see also *Sumner* v. *Partridge* (1740), 2 Atk. 47; *Barker* v. *Barker* (1828), 2 Sim. 249, cited in note (*b*), *infra*.

(*b*) *Sumner* v. *Partridge* (1740), 2 Atk. 47 (devise to wife in fee, but in case she died before her husband then to her children in fee; the wife died before her husband, leaving children: held, that the husband was not entitled to curtesy); *Barker* v. *Barker* (1828), 2 Sim. 249 (devise to wife in fee, but if she should die leaving issue then to the issue and their heirs; wife died leaving issue: held, that the husband was not entitled to curtesy); and see *Boothby* v. *Vernon* (1723), 9 Mod. Rep. 147; *Jones* v. *Davies* (1861), 7 H. & N. 507, Ex. Ch.

(*c*) 2 Bl. Com. 126; and, similarly, as to a rentcharge in which the wife has an estate tail (Co. Litt. 30 c).

(*d*) *Paine's Case* (1587), 8 Co. Rep. 34 a; *Steadman* v. *Pulling* (1746), 3 Atk. 423.

(*e*) As to proof of live birth, see *Brock* v. *Kellock* (1861), 3 Giff. 58; *Jones* v. *Ricketts* (1862), 31 Beav. 130.

(*f*) *Paine's Case, supra*; Co. Litt. 29 b; *Basset* v. *Basset* (1744), 3 Atk. 203, 207; *Goodtitle* d. *Newman* v. *Newman* (1774), 3 Wils. 516. It has been said that birth by the Cæsarean operation would not give curtesy (Co. Litt. 29 b).

(*g*) Co. Litt. 29 b; Perkins, Laws of England, s. 473.

(*h*) *Paine's Case, supra*; Co. Litt. 19 a.

(*i*) Co. Litt. 19 a.

(*k*) Co. Litt. 29 b.

SUB-SECT. 2.—*Incidents.*

SECT. 4. **Estate by the Curtesy.**

357. The incidents of an estate for life are, generally speaking, the same whether the estate arises by act of the parties or by operation of law (*l*). Hence, a tenant by the curtesy is under the same liability for waste as any other tenant for life impeachable for waste (*m*); and he must keep down the interest on incumbrances (*n*). On the other hand, he has the rights of a tenant for life in respect of the enjoyment of the property during his life, and on his death his personal representatives are entitled to emblements (*o*). In the case of a manor he is lord *pro tempore* (*p*), and in the case of an advowson he enjoys the same right of presentation as his wife would have enjoyed if living (*q*). If his wife was tenant in common or coparcener, he is entitled to the remedies of a co-owner for life to partition (*r*). Rights of tenant by curtesy.

358. A tenant by the curtesy has the statutory powers of sale, exchange, and leasing of a tenant for life of settled land (*s*), his estate being deemed, for the purposes of the statutes, to be an estate arising under a settlement made by the wife (*t*). Apart from the statutory powers, a lease granted by a tenant by the curtesy is absolutely determined by his death (*a*). Powers of tenant by curtesy.

359. Where both husband and wife take legacies under a will which disposes of her estate of inheritance, so that she has to elect between her estate and the legacies, and she elects to keep her estate, the husband is not also bound to elect between his right of curtesy in her estate and the legacy given to him (*b*). But an Effect of wife's election.

(*l*) 2 Bl. Com. 122.

(*m*) Co. Litt. 53 a; and see p. 175, *ante*. This is equally so as to gavelkind lands (Bac. Abr., tit. Gavelkind (A)). A tenant by the curtesy was liable for waste at common law before the statutory liability was imposed on tenants for life generally (see note (*p*), p. 175, *ante*); and he remained under the liability even after he had assigned his estate (*Walker's Case* (1587), 3 Co. Rep. 22 a, 23 b).

(*n*) *Casborne* v. *Scarfe* (1738), 1 Atk. 603, 606. He takes of course, subject to all incumbrances affecting the estate of the wife.

(*o*) 2 Bl. Com. 122; and see p. 177, *ante*.

(*p*) Accordingly, upon copyholds escheating, he can make regrants at the ancient rents, customs, and services, which will be binding on the inheritance of the manor (*Clarke* v. *Pennifather* (1584), 4 Co. Rep. 23 b); and see title COPYHOLDS, Vol. VIII., pp. 82 *et seq.*

(*q*) Thus if his wife was coparcener and the eldest, he is entitled to the first presentation in preference to the other coparceners (Co. Litt. 166 b; *Harris and Haies* v. *Nichols* (1583), Cro. Eliz. 19); and see title ECCLESIASTICAL LAW, Vol. XI., pp. 571, 572.

(*r*) Co. Litt. 175 b; and see title PARTITION, Vol. XXI., pp. 809 *et seq.*

(*s*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 58; Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 46.

(*t*) Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 8; and see title SETTLEMENTS.

(*a*) *Miller and Johns* v. *Manwaring* (1635), 4 Cro. Car. 397. But a lease by a tenant by the curtesy may be valid in favour of a lessee acting in good faith, notwithstanding that it does not purport to be granted in pursuance of the Settled Land Acts (*Mogridge* v. *Clapp*, [1892] 3 Ch. 382, C. A.). As to the powers of a tenant for life generally, see title SETTLEMENTS.

(*b*) *Cavan (Lady)* v. *Pulteney* (1795), 2 Ves. 544; (1797) 3 Ves. 384.

SECT. 4. **Estate by the Curtesy.**

election by the wife to relinquish her estate binds her husband's right of curtesy (*c*).

SUB-SECT. 3.—*How Defeated.*

Defeated by wife's disposition.

360. The right of curtesy may be barred by a marriage settlement, or a contract between husband and wife (*d*), or by the husband joining with the wife in a disposition of the property by deed acknowledged (*e*), or by her election to relinquish the property (*f*); and in the case of property limited to the separate use of the wife (*g*), the right may be barred in equity by her sole disposition, either *inter vivos* or by will, if she is not restrained from anticipation; and even if she is restrained from anticipation, the right may be barred by her testamentary disposition (*h*).

Women married on or since the 1st January, 1883, may bar the right of curtesy, at law as well as in equity, by disposing of the property either by deed or will, and in equity by a contract to dispose thereof, and women married before that date may similarly bar the right with respect to any property the title to which has accrued on or after that date (*i*).

By divorce and judicial separation.

361. The right of curtesy is defeated by a decree for dissolution of marriage (*k*). In the case of a decree of judicial separation, property acquired by or devolving upon the wife while the separation continues may be disposed of by her as if she were a *feme sole*, and if she dies intestate, it devolves as though her husband were dead, so that the husband has no right of curtesy in any such property as long as the separation lasts (*l*); but, in the event of a reconciliation and the resumption of cohabitation, the right of curtesy revives, save that all property to which she is then entitled is held to her separate use, subject to any agreement entered into between her and her husband while living apart (*l*), and is therefore subject to her power of disposition. A protection order granted to the wife on the ground of the husband's desertion, or a separation order

(*c*) *Darlington* (*Earl*) v. *Pulteney* (1795), 2 Ves. 544, 560; *Vane* v. *Dungannon* (*Lord*) (1804), 2 Sch. & Lef. 118, 133; *Ardesoife* v. *Bennet* (1772), 2 Dick. 463; *Wilson* v. *Townshend* (*Lord John*) (1795), 2 Ves. 693; compare *Brodie* v. *Barry* (1813), 2 Ves. & B. 127.

(*d*) *Shurmur* v. *Sedgwick*, *Crossfield* v. *Shurmur* (1883), 24 Ch. D. 597; and see title SETTLEMENTS. As to contracts between husband and wife, see title HUSBAND AND WIFE, Vol. XVI., pp. 391 *et seq.*

(*e*) See p. 298, *post.*

(*f*) See the cases cited in note (*c*), *supra.*

(*g*) See title HUSBAND AND WIFE, Vol. XVI., pp. 341 *et seq.*

(*h*) *Cooper* v. *Macdonald* (1877), 7 Ch. D. 288, C. A.; and see title WILLS.

(*i*) Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 1 (1), (2), 2, 5. The statute has not affected the right of curtesy except in so far as it has given a wife the power to defeat it by her disposition (*Hope* v. *Hope*, [1892] 2 Ch. 336); and see title HUSBAND AND WIFE, Vol. XVI., pp. 348 *et seq.*

(*k*) *Wilkinson* v. *Gibson* (1867), L. R. 4 Eq. 162; *Prole* v. *Soady* (1868), 3 Ch. App. 220; and see title HUSBAND AND WIFE, Vol. XVI., p. 334.

(*l*) Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 25; and see title HUSBAND AND WIFE, Vol. XVI., pp. 334, 346, 370

granted by a court of summary jurisdiction, has the same effect in this respect, during its continuance, as a decree of judicial separation (*m*). SECT. 4. Estate by the Curtesy.

The right of curtesy is not affected, apart from a decree of judicial separation, by the fact of the husband leaving the wife and living in adultery (*n*). Adultery of husband.

SECT. 5.—*Estate in Dower.*

SUB-SECT. 1.—*Nature and Condition of Estate.*

362. Dower at common law (*o*) is the right of a wife on surviving her husband to an estate for her life in one third part of the freehold estates of inheritance (*p*) of which her husband was solely seised at any time during the marriage to which her issue by him might by possibility have been the heir-at-law (*q*). It is not necessary, as in the case of curtesy, that issue should be actually born in order to entitle the wife to dower; it is sufficient that issue capable of inheriting might have been born of her (*r*). By the custom of Nature of dower.

(*m*) Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 21; Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 5 (a); and see title HUSBAND AND WIFE, Vol. XVI., pp. 334, 346, 370.

(*n*) *Sidney* v. *Sidney* (1734), 3 P. Wms. 269, 276; *Re Walker* (*Anne*) (1835), L. & G. *temp.* Sugd. 299, 326.

(*o*) The special forms of dower *ad ostium ecclesiæ* and dower *ex assensu patris* (as to which see Littleton's Tenures, ss. 38, 39, 40; Co. Litt. 34 a —37 b) were abolished by the Dower Act, 1833 (3 & 4 Will. 4, c. 105), s. 13. Dower *de la plus belle*, a consequence of tenure by knight service (see p. 140, *ante*), was abolished by stat. (1660) 12 Car. 2, c. 24.

(*p*) See *Jones* v. *Jones* (1832), 2 Cr. & J. 601. By the common law, an alien woman marrying an Englishman is not entitled to dower (*Wall's Case* (1848), 6 Moo. P. C. C. 216; see title ALIENS, Vol. I., p. 306). The widow of a mortgagee or trustee was at law entitled to dower out of the mortgaged land or trust estate, but took subject to the right of redemption or to the trust (*Noel* v. *Jevon* (1678) Freem. (CH.) 43; *Bevant* v. *Pope* (1681), Freem. (CH.) 71; *Flack* v. *Longmate* (1845) 8 Beav. 420); but see *Henley* v. *Webb* (1820), 5 Madd. 407); see title EQUITY, Vol. XIII., pp. 95, 96. But now such estates devolve on the personal representatives; see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 233.

(*q*) 2 Bl. Com. 131; Littleton's Tenures, ss. 36—53. The right to dower out of foreign and colonial land depends on the law of the place where the land is situated (*Re Rea, Rea* v. *Rea*, [1902] 1 I. R. 451; and see title CONFLICT OF LAWS, Vol. VI., pp. 199 *et seq.*, 218 *et seq.*). The Court of Chancery did not recognise the right to dower out of equitable estates (see title EQUITY, Vol. XIII., p. 95, note (*e*)), though as to equities of redemption, see *Palmes* v. *Danby* (1701), Prec. Ch. 137; *Hamilton* (*Duke*) v. *Mohun* (*Lord*) (1710), 1 P. Wms. 118; *White* v. *White* (1804), 9 Ves. 554; in the case of persons married after the 1st January, 1834, this right is now given by the Dower Act, 1833 (3 & 4 Will. 4, c. 105), ss. 1, 2, and extends to gavelkind (*Re Maskell and Goldfinch's Contract*, [1895] 2 Ch. 525) and borough-English lands (*Farley* v. *Bonham* (1861), 2 John. & H. 177). As to customary dower, or freebench, in copyhold lands, see title COPYHOLDS, Vol. VIII., pp. 78 *et seq.* As to a widow's interest in her deceased husband's undisposed of personal estate, see title DESCENT AND DISTRIBUTION, Vol. XI., pp. 16—18. A husband is not obliged to leave his wife any portion of his property.

(*r*) Thus if the husband has an estate in tail special to him and the heirs of his body by a particular wife, that wife is dowable, though the husband dies without issue by her, for the issue, had there been any, would

SECT. 5. Estate in Dower.

gavelkind, the dower extends to a moiety of the husband's estates of inheritance, but continues only so long as she remains chaste and unmarried (*s*). By the custom of borough-English it may extend to the whole (*t*).

Property in which enjoyed.

363. The right of dower extends to land (*u*), and to all incorporeal real hereditaments which can be the subject of estates of inheritance, such as rents (*v*), common appendant or in gross (*w*), advowsons appendant and in gross (*x*) and franchises (*a*). But personal hereditaments are not subject to dower (*b*); nor is real property which is treated in equity as personal property (*c*).

have inherited; but, if the wife dies and the husband remarries, the second wife is not dowable (Littleton's Tenures, s. 53; *Paine's Case* (1587), 8 Co. Rep. 34 a, 36 a). In considering the possibility of issue the law does not regard the age of the parties, save that the wife is not dowable unless she is above nine years at her husband's death (Co. Litt. 40 a). A second wife is dowable out of an estate in fee simple or fee tail general notwithstanding there is a son by the first wife, since that son might die and her own issue inherit (2 Bl. Com. 131).

(*s*) Bac. Abr., tit. Gavelkind (A.); *Hunt* v. *Gilburne* (1588), Cro. Eliz. 121; *Davies* v. *Selby* (1601), Cro. Eliz. 825; Co. Litt. 33 b; and see p. 152, *ante*. The presumption of chastity continues until she can be proved to have been delivered of a child (Robinson, Gavelkind, 5th ed., 205, 206).

(*t*) Littleton's Tenures, s. 166; and as to borough-English, see p. 155, *ante*.

(*u*) Including a mansion house (*Gerarrd* (*Lord*) v. *Gerrard* (*Lady*) (1696), 1 Ld. Raym. 72). Mines and minerals which are opened or worked in the husband's lifetime, whether by the husband or his lessee, and whether they are under the husband's lands or are granted to him in fee simple or fee tail under the lands of another, are subject to dower (*Hoby* v. *Hoby* (1684), 1 Vern. 218; *Dickin* v. *Hamer* (1860), 1 Drew. & Sm. 284), but unopened mines are not (*Stoughton* v. *Leigh* (1808), 1 Taunt. 402); and see p. 198, *post*.

(*v*) Co. Litt. 144 b. But if a rent is granted to the husband in tail without remainder over, and he dies without issue, the widow can have no dower, because the subject-matter has ceased to exist (*Chaplin* v. *Chaplin* (1734), 3 P. Wms. 229). It is otherwise in the case of a grant in tail with remainder over, where the rent, by virtue of the remainder, continues in existence after the death of the tenant in tail without issue (*Chaplin* v. *Chaplin*, *supra*).

(*w*) See title COMMONS AND RIGHTS OF COMMON, Vol. IV., pp. 446 *et seq*. But not of a common without stint (Co. Litt. 32 a (confined to common in gross); 2 Bl. Com. 132).

(*x*) Co. Litt. 32 a; *Howard* v. *Cavendish* (1621), Cro. Jac. 621.

(*a*) See, generally, as to property subject to dower, Co. Litt. 31 b, 32 a. "All her husband's lands, tenements and hereditaments, corporeal or incorporeal" (2 Bl. Com. 132; *Buckeridge* v. *Ingram* (1795), 2 Ves. 652, 663; *Drybutter* v. *Bartholomew* (1723), 2 P. Wms. 127 (New River share)).

(*b*) Co. Litt. 32; *Stafford* (*Earl*) v. *Buckley* (1750), 2 Ves. Sen. 170; *Aubin* v. *Daly* (1820), 4 B. & Ald. 59; *Holdernesse* (*Countess Dowager*) v. *Carmarthen* (*Marquis*) (1784), 1 Bro. C. C. 377; *Lyster* v. *Mahony* (1841), 1 Dr. & War. 236.

(*c*) Thus partnership land, even if conveyed in fee to one partner alone, is not subject to dower, since it is deemed to be personalty (*Thornton* v. *Dixon* (1791), 3 Bro. C. C. 199; *Ripley* v. *Waterworth* (1802), 7 Ves. 425; *Bell* v. *Phyn* (1802), 7 Ves. 453; *Selkrig* v. *Davies* (1814), 2 Dow, 230, 242, H. L.; *Phillips* v. *Phillips* (1832), 1 My. & K. 649; see title PARTNERSHIP, Vol. XXII., p. 56); and the exercise of an option to purchase given by the husband before the right of dower has attached defeats the right

Necessity of husband's seisin.

364. In order that the right to dower may attach at common law, the husband must during the marriage have been solely seised of the property, whether corporeal or incorporeal, for an estate of inheritance in possession (*d*); and such seisin may be either seisin in deed or seisin in law (*e*). There is no dower out of an estate which is still in remainder or reversion when the husband dies (*f*); but a reversion upon a term of years subject to a rent is treated as a freehold in possession, and the existence of the term does not prevent the dower attaching (*g*).

Joint tenants and tenants in common.

The requirement of sole seisin excludes dower in the case of a joint tenancy (*h*); but, in a tenancy in common, though the physical

whether the option is exercised before or after the death of the husband (*Townley* v. *Bedwell* (1808), 14 Ves. 591; see *Lloyd* v. *Lloyd* (1843), 2 Con. & Law. 592; title EQUITY, Vol. XIII., p. 111).

(*d*) Littleton's Tenures, s. 36; 2 Bl. Com. 131. Thus there is no dower out of an estate *pur autre vie*, since it is not an estate of inheritance (*Re Michell, Moore* v. *Moore*, [1892] 2 Ch. 87); see note (*t*), p. 180, *ante*). Nor at common law is there dower out of rights of entry or of action, since the husband is not seised. But dower is extended by statute to rights of entry on, or of action to recover, property itself subject to dower (Dower Act, 1833 (3 & 4 Will. 4, c. 105), s. 3); and, as regards equitable estates, to which the right of dower is also extended by the same statute (*ibid.*, s. 2), it is sufficient that the husband is during the marriage either in beneficial possession, or entitled to such possession; see *Re Michell, Moore* v. *Moore, supra;* compare *Lemon* v. *Mark*, [1899] 1 I. R. 416, 435, C. A. (where an estate *pur autre vie* was held to have merged in an ultimate remainder in fee notwithstanding the interposition of a contingent estate). As to the old conveyancing devices to defeat dower, see pp. 192 *et seq.*, *post.*

(*e*) For this purpose "seised" extends "as well to a seisin in law, as to a seisin in deed, which is a natural seisin, but the husband must be seised either the one way or the other during the coverture" (Co. Litt. 31 a; 2 Bl. Com. 131); and see p. 214, *post.*

(*f*) Co. Litt. 32 a; *Duncomb* v. *Duncomb* (1696), 3 Lev. 437; *Boothby* v. *Vernon* (1725), 9 Mod. Rep. 147; *D'Arcy* v. *Blake* (1805), 2 Sch. & Lef. 387. If before the marriage the husband grants a lease for life reserving rent to him and his heirs, and dies after the marriage before the tenant for life, the wife has no dower out of the reversion, because the husband was not seised, nor out of the rent, because the husband had no estate of inheritance therein (Co. Litt. 32 a); but she has dower out of a rent reserved on a grant in tail so long as the estate tail continues (Co. Litt. 32 a, note (4)).

(*g*) *Bates* v. *Bates* (1698), 1 Ld. Raym. 326; *Hitchens* v. *Hitchens* (1700), 2 Vern. 403; *Stoughton* v. *Leigh* (1808), 1 Taunt. 402. The widow is dowable out of the land or the rent according as the lease was made during or before coverture (*Stoughton* v. *Leigh, supra*, at p. 410). As to the former effect of attendant terms as a bar to dower, see *Radnor* (*Countess*) v. *Vandebendy* (1686), Show. Parl. Cas. 69; *Hill* v. *Adams* (1741), 2 Atk. 208; S. C., *sub nom. Swannock* v. *Lyford*, Amb. 6; *Mole* v. *Smith* (1822), Jac. 490; Satisfied Terms Act, 1845 (8 & 9 Vict. c. 112); see p. 270, *post;* and see note (*q*), p. 192, *post;* and, as to relief in equity, see *Radnor* (*Lady*) v. *Rotheram* (1696), Prec. Ch. 65; *Dudley* (*Lord*) v. *Dudley* (*Lady*) (1705), Prec. Ch. 241; *Williams* v. *Lambe* (1791), 3 Bro. C. C. 264; *Wilkins* v. *Lynch* (1830), Hayes, 98; and see title EQUITY, Vol. XIII., pp. 42, 77, note (*d*).

(*h*) Littleton's Tenures, s. 45. But if the husband severs the joint tenancy, or becomes by survivorship entitled to the whole, dower attaches in respect of the part or the whole, as the case may be, and, if partition takes place, dower attaches on the land assigned to the husband (*Reynard* v. *Spence* (1841), 4 Beav. 103).

SECT. 5. **Estate in Dower.**

possession is joint, each tenant in common has a separate seisin of his undivided share and dower attaches (*i*).

Temporary seisin.

It is not, at common law, necessary that the seisin should continue till the husband's death: a temporary seisin, however short, is sufficient to raise the right of dower (*k*); and formerly, if the husband alienated, he alienated subject to the right of dower (*l*). Moreover, if his seisin is defeated by re-entry for breach of condition, his estate is gone, and the right of dower also ceases (*m*).

Effect of executory gift over and escheat.

365. Since birth of issue is not essential, the right of dower attaches notwithstanding that the husband's estate in fee is defeated for want of issue; thus, where there is a devise to the husband with an executory devise over if he dies without leaving issue, the wife has her dower notwithstanding that the devise over takes effect (*n*); and, similarly, dower is not defeated by an escheat (*o*).

SUB-SECT. 2.—*How Defeated.*

Statutory restriction on dower.

366. By virtue of the Dower Act, 1833 (*p*), the widow is not entitled to dower out of any land which has been absolutely disposed of by her husband in her lifetime, or by his will (*q*). A general

(*i*) Littleton's Tenures, s. 45.

(*k*) 2 Bl. Com. 132; *Broughton* v. *Randall* (1586), Cro. Eliz. 502, 503, note. But a merely transitory seisin, such as the seisin of grantee to uses, is not sufficient (*Sneyd* v. *Sneyd* (1738), 1 Atk. 442); see 2 Bl. Com. 131, 132.

(*l*) Co. Litt. 32 c; 2 Bl. Com. 132.

(*m*) See Littleton's Tenures, s. 325; Co. Litt 201 b; and see p. 169, *ante*; and though under the doctrine of uses dower attaches to the use (see note (*q*), *infra*), yet it ceases if the use is determined. Thus, if land is limited to such uses as the husband shall appoint, and in default of appointment to himself in fee, dower attaches at once, because he is seised until the execution of the power (*Cunningham* v. *Moody* (1748), 1 Ves. Sen. 174; *Doe* d. *Willis* v. *Martin* (1790), 4 Term Rep. 39; *Smith* v. *Camelford* (*Lord*) (1795) 2 Ves. 698; *Doe* d. *Collins* v. *Weller* (1798), 7 Term Rep. 478); but upon the execution of the power the right to dower is defeated (*Ray* v. *Pung* (1821), 5 Madd. 310).

(*n*) *Moody* v. *King* (1825), 2 Bing. 447; *Smith* v. *Spencer* (1856), 4 W. R. 729.

(*o*) *Burgess* v. *Wheate*, *A.-G.* v. *Wheate* (1759) 1 Eden, 193.

(*p*) 3 & 4 Will. 4, c. 105.

(*q*) *Ibid.*, s. 4. The Act only applies to persons married since the 1st January, 1834 (*ibid.*, s. 14). In the Act "land" extends to manors, advowsons, messuages, and all other hereditaments, whether corporeal or incorporeal (except such as are not liable to dower) and to any share thereof. For statutory definitions of "land," see p. 157, *ante*. Formerly a term of years (not subject to a rent), vested in a purchaser or mortgagee, might afford protection against dower (*Anderson* v. *Pignet* (1872), 8 Ch. App. 180; and see *Wynn* v. *Williams* (1799), 5 Ves. 130; *Maundrell* v. *Maundrell* (1805), 10 Ves. 246, 271, 272). Since the right of dower is now placed entirely under the control of the husband, the former methods by which the right was barred are obsolete. This might be (1) by legal jointure, (2) by equitable jointure, and (3) by conveyance to the husband to uses to bar dower. The Statute of Uses (27 Hen. 8, c. 10), by turning uses into legal estates, made them liable to dower, and it was accordingly provided (*ibid.*, ss. 6, 7) that estates might be conveyed by way of jointure, so as to bar the general right to dower. (1) Jointure was a competent livelihood of freehold to the wife of lands and tenements to take effect presently after the death of the

devise of all his realty, without any declaration as to dower, is a sufficient disposition for this purpose, and dower is therefore now practically confined to property in respect of which the husband dies intestate (*r*). This extends to lands subject to

husband for the life of the wife at least; and might be made either before or after marriage (Co. Litt. 36 b). A jointure under the statute, made before marriage, bound the wife though she was an infant (*Buckingham (Earl)* v. *Drury* (1762), 3 Bro. Parl. Cas. 492); and see title DESCENT AND DISTRIBUTION, Vol. XI., p. 18. A jointure after marriage bound the wife, if she accepted it; otherwise she could elect between the jointure and dower (Co. Litt. 36 b; *Butler and Baker's Case* (1591), 3 Co. Rep. 25 a, 26 a, b; *Vernon's Case* (1572), 4 Co. Rep. 1 a, 4 a); and see, further, title EQUITY, Vol. XIII., pp. 120, 121, note (*i*). (2) There may also be equitable jointure. Any provision intended to be in lieu of dower and accepted by the wife, being of full age, in satisfaction thereof, is in equity a bar to the right of dower whether made before or after marriage, and whatever the nature of the provision (*Dyke* v. *Rindall* (1852), 2 De G. M. & G. 209; *Thompson* v. *Watts* (1862), 2 John. & H. 291); compare *Gurly* v. *Gurly* (1842), 8 Cl. & Fin. 743, H. L. (a provision in satisfaction of dower and "thirds" prevents her claiming under the Statute of Distributions; see title DESCENT AND DISTRIBUTION, Vol. XI., p. 18); see *Caruthers* v. *Caruthers* (1794), 4 Bro. C. C. 500; *Fyan* v. *Henry* (1840), 2 Dr. & Wal. 556; *Hervey* v. *Hervey* (1739), 1 Atk. 561; *Corbet* v. *Corbet* (1824), 1 Sim. & St. 612. In *Rose* v. *Reynolds* (1580), 1 Swan. 446, a term of years, and in *Lacy* v. *Anderson* (1582), 1 Swan. 445, copyhold lands were a satisfaction of dower. The right of freebench may be barred in equity, though not at law, in a similar manner (*Walker* v. *Walker* (1747), 1 Ves. Sen. 54; see note (*r*), *infra;* title COPYHOLDS, Vol. VIII., p. 78); and as to the doctrine of satisfaction, see title EQUITY, Vol. XIII., pp. 128 *et seq.* An agreement by marriage articles to secure a jointure of a specified amount in lieu of dower operates as a bar in equity, though the husband may die before executing a settlement (*Pennefather* v. *Pennefather* (1872), 6 I. R. Eq. 171; see *Hamilton* v. *Jackson* (1845), 2 Jo. & Lat. 295); but where by marriage articles (*Daly* v. *Lynch* (1715), 3 Bro. Parl. Cas. 478; *Caruthers* v. *Caruthers, supra*), or other agreement before marriage (*Lemon* v. *Mark*, [1899] 1 I. R. 416), to which the wife was not a party, an agreement has been made for provision in lieu of dower, the wife has, as in legal jointure (*Lemon* v. *Mark, supra*), her election between jointure and dower. (3) The usual method, however, of defeating dower before the Dower Act, 1833 (3 & 4 Will. 4, c. 105), was for a purchaser on the purchase of lands to have the land conveyed to him to uses to bar dower: that is, to such uses as the purchaser should appoint by deed; in default of appointment, to himself for life, and in the event of the determination of the estate by any means during his life, to a trustee and his heirs in trust for him during his life; with an ultimate remainder to the purchaser, his heirs and assigns. Under these limitations the purchaser had at no time during his life an estate of inheritance in possession on which the right of dower could attach (Williams, Real Property, 21st ed., pp. 390 *et seq.*). Such a limitation is now needless, since the husband can defeat dower by alienation, and also useless, since the right of dower now attaches to estates, partly legal and partly equitable, which are equal to an estate of inheritance in possession (Dower Act, 1833 (3 & 4 Will. 4, c. 105), s. 2; *Fry* v. *Noble* (1855), 7 De G. M. & G. 687, C. A.).

(*r*) *Lacey* v. *Hill, Leney* v. *Hill* (1875), L. R. 19 Eq. 346; see *Thompson* v. *Burra* (1873), L. R. 16 Eq. 592. As to how dower in copyholds, or freebench, is barred, see *Lacey* v. *Hill, Leney* v. *Hill, supra; Thompson* v. *Burra, supra;* as to dower or freebench being barred in equity by other provision if so intended, see *Walker* v. *Walker, supra; Willis* v. *Willis* (1865), 34 Beav. 340); and, as to election between a legacy and free bench, see *Thompson* v. *Burra, supra; Grayson* v. *Deakin* (1849), 3 De G. & Sm. 298; and see note (*g*), p. 194, *post.*

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the customs of gavelkind and borough-English (*s*), but not to copyholds (*t*).

Priority of charges over dower.

367. Moreover, all partial estates and interests, and all charges created by any disposition or will of the husband, and all debts, incumbrances, contracts and engagements to which his land is subject, are valid and effectual against the right to dower (*u*). But dower still appears to have priority over creditors of the deceased husband who have not obtained a charge on the land in his lifetime (*a*).

Declaration barring dower.

368. The widow's right to dower out of particular property is barred if in the deed by which the property is conveyed to the husband (*b*), or by any deed executed by him, it is declared that his widow shall not be entitled to dower (*c*); or if by his will he makes a similar declaration (*d*); and the right is subject to any conditions, restrictions, or directions declared by his will (*e*).

Devise or bequest to widow.

369. The widow's right to dower may also be barred by any beneficial devise to her. Thus, where the husband devises any land or hereditaments, out of which the widow would be entitled to dower if they were not so devised, to or for her benefit, she is not entitled to dower out of any property of the husband, unless a contrary intention is declared by the will (*f*); but no gift or bequest by a husband to or for the benefit of his widow out of his personal estate, or out of land not liable to dower, defeats or prejudices her right to dower unless a contrary intention is expressed by the will (*g*).

(*s*) *Farley* v. *Bonham* (1861), 2 John. & H. 177. As to gavelkind and borough-English, see pp. 151—155, *ante*.

(*t*) See title COPYHOLDS, Vol. VIII., p. 79.

(*u*) Dower Act, 1833 (3 & 4 Will. 4, c. 105), s. 5.

(*a*) *Spyer* v. *Hyatt* (1855), 20 Beav. 621 (which, however, was a case of freebench, and was outside the Dower Act, 1833 (3 & 4 Will. 4, c. 105); *Jones* v. *Jones* (1858), 4 K. & J. 361; *Northern Banking Co.* v. *M'Mackin*, [1909] 1 I. R. 374. The Administration of Estates Act, 1833 (3 & 4 Will. 4, c. 104), and the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 11, seem not to have altered this rule; but see Williams, Real Property, 21st ed., p. 326, n.; and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., pp. 244 *et seq.*

(*b*) This is so, even if the husband dies without executing the deed (*Fairley* v. *Tuck* (1857), 6 W. R. 9). But where in a deed executed before 1834 the limitation of the property was expressed to be to the intent that the then present or any future wife of the purchaser should not be entitled to dower, it was held that that was not a sufficient declaration to exclude the dower of a wife to whom the purchaser was married after the commencement of the Act (*Fry* v. *Noble* (1855), 7 De G. M. & G. 687, C. A.).

(*c*) Dower Act, 1833 (3 & 4 Will. 4, c. 105), s. 6.

(*d*) *Ibid.*, s. 7.

(*e*) *Ibid.*, s. 8.

(*f*) *Ibid.*, s. 9. A gift to the widow of the income of the proceeds of land devised on trust for sale is a beneficial devise so as to defeat dower, although there may be a residue of realty undisposed of (*Re Thomas*, *Thomas* v. *Howell* (1886), 34 Ch. D. 166; see *Rowland* v. *Cuthbertson* (1869), L. R. 8 Eq. 466).

(*g*) Dower Act, 1833 (3 & 4 Will. 4, c. 105), s. 10; *Strahan* v. *Sutton* (1796), 3 Ves. 249; *Ayres* v. *Willis* (1749), 1 Ves. Sen. 230. By the old law prior to the Dower Act, 1833 (3 & 4 Will. 4, c. 105), if the widow was given an annuity intended to be in lieu of her dower, she had to elect between

370. An agreement by a husband not to bar his wife's right of dower is enforceable in equity (*h*). Agreement not to bar.

371. On the other hand, a wife may preclude herself from claiming dower by a contract with the husband during the marriage (*i*). Barring agreement by wife.

If a wife joins her husband in a mortgage of the property for the purpose of releasing her dower, her right is absolutely barred, in equity as well as at law, and she has no right of redemption, nor any right to have the value of her dower made good out of any surplus after payment of the mortgage debt (*k*). Release by wife.

A widow may also waive her right of dower; but, if she joins in a mortgage with the heir-at-law or other person entitled to the property subject to dower, for the purpose of extinguishing her right, she is *primâ facie* deemed to extinguish it only for the purpose of the mortgage, so that on repayment of the debt the right of dower revives (*l*). Release by widow.

372. A decree for dissolution of marriage, when made absolute, extinguishes the right to dower or freebench, even if it is obtained by the wife on the ground of the husband's misconduct (*m*). But a decree of judicial separation (*n*), since it does not interrupt the Effect of divorce.

the dower and the annuity (*Reynard* v. *Spence* (1841), 4 Beav. 103; and see note (*q*), p. 192, *ante*). The question of intention depended on the construction of the will as a whole and the circumstances of each particular case; compare *Wetherell* v. *Wetherell* (1862), 4 Giff. 51 (widow held entitled both to dower and the annuity). Where an annuity was given to the widow, and the lands of the testator were devised to trustees, it was held that the mere fact of the trustees being given power to lease and manage the lands was not of itself sufficient to raise an implication of an intention to exclude dower so as to oblige her to elect between dower and the annuity, and that the amount of the annuity was a material circumstance to be taken into consideration as indicating the intention (*Warbutton* v. *Warbutton* (1854), 2 Sm. & G. 163; *Parker* v. *Sowerby* (1853), 1 Drew. 488; and see *Bending* v. *Bending* (1857), 3 K. & J. 257). If a widow elects to take a legacy bequeathed to her in satisfaction of dower, the legacy has priority over other legacies (*Burridge* v. *Bradyl* (1710), 1 P. Wms. 127; *Blower* v. *Morret* (1752), 2 Ves. Sen. 420; see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 276). The Dower Act, 1833 (3 & 4 Will. 4, c. 105), does not interfere with this rule (*ibid.*, s. 12).

(*h*) *Ibid.*, s. 11.

(*i*) *Slatter* v. *Slatter* (1834), 1 Y. & C. (EX.) 28 (separation deed, the wife accepting an annuity in satisfaction of dower); and as to contracts generally between husband and wife, see title HUSBAND AND WIFE, Vol. XVI., pp. 391 *et seq.*, 432 *et seq.*

(*k*) *Dawson* v. *Bank of Whitehaven* (1877), 6 Ch. D. 218, C. A.; compare *Meek* v. *Chamberlain* (1881), 8 Q. B. D. 31.

(*l*) *Meek* v. *Chamberlain*, *supra* (widow joined heir in mortgage to building society, it being provided that on repayment a receipt should be indorsed and the mortgage vacated, and the property be revested in the persons for the time being interested in the equity of redemption: on repayment, held that she was entitled to dower).

(*m*) *Frampton* v. *Stephens* (1882), 21 Ch. D. 164. The court, in making provision for the wife, may take this into consideration; see title HUSBAND AND WIFE, Vol. XVI., pp. 566, 567.

(*n*) As to the effect of a separation deed on the right to dower, see title HUSBAND AND WIFE, Vol. XVI., p. 448.

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continuance of the marriage, does not affect the right of the wife to dower or freebench (*o*).

Effect of adultery by wife.

373. The right of dower is forfeited by the adultery of the wife, in the absence of a subsequent reconciliation (*p*), even if she left her husband in consequence of his cruelty (*q*), or the adultery was brought about by his misconduct (*r*), or was committed after a separation by mutual consent (*s*).

SUB-SECT. 3.—*Assignment and Recovery.*

Time of assignment.

374. A widow is entitled to be endowed immediately after her husband's death, and her dower ought to be assigned to her within forty days after that event, during which she is entitled to reside in her deceased husband's capital messuage or other dwelling-house, of which she is dowable, and to be supported out of his estate (*t*).

Quarantine.

This right of residence is called the "widow's quarantine," and it determines if she marries or departs from the deceased husband's house during the forty days (*u*).

Person to make assignment.

375. The person who has the right to assign dower is the heir or other person entitled to the freehold of the property subject thereto (*a*). A minor is competent to make the assignment (*b*), subject to a right, in the case of an excessive assignment, to have it corrected on his coming of age (*c*).

Method of making assignment.

376. The assignment may be made by parol (*d*). It must be unconditional and free from exception or reservation (*e*). One third in value of the property must be assigned, the value to be ascertained at the time of the assignment (*f*), and, where the husband died without leaving issue, after deducting the apportioned part of the £500 to which the widow is entitled as a first charge (*g*).

Assignment by metes and bounds.

In the case of land, the assignment must be set out by metes and

(*o*) *Frampton* v. *Stephens* (1882), 21 Ch. D. 164; *Shute* v. *Shute* (1700), Prec. Ch. 111.

(*p*) Statute of Westminster II., 1285 (13 Edw. 1, c. 34); Co. Litt. 32 b; *Sidney* v. *Sidney* (1734), 3 P. Wms. 269, 276; *Coot* v. *Berty* (1698), 12 Mod. Rep. 232.

(*q*) *Woodward* v. *Dowse* (1861), 10 C. B. (N. S.) 722.

(*r*) *Bostock* v. *Smith* (1864), 34 Beav. 57.

(*s*) *Hetherington* v. *Graham* (1829), 6 Bing. 135.

(*t*) Magna Carta, 1224 (9 Hen. 3, c. 7); Co. Litt. 32 b, 34 b; 2 Co. Inst. 17; *Lloyd* v. *Trimleston* (*Lord*) (1829), 2 Mol. 81.

(*u*) *Kettillesby* v. *Kettillesby* (1552), Dyer, 76 b.

(*a*) Co. Litt. 34 b, 35 a. Where a married woman is entitled to the freehold, her husband, if seised in her right, may assign dower (1 Roll. Abr. 681).

(*b*) 1 Roll. Abr. 137, 681; *Gore* v. *Perdue* (1593), Cro. Eliz. 309.

(*c*) Co. Litt. 39 a. Apparently a guardian in socage cannot assign dower, though formerly a guardian in chivalry could (Co. Litt. 35 a).

(*d*) Co. Litt. 35 a; *Rowe* v. *Power* (1805), 2 Bos. & P. (N. R.) 1, 34, H. L.

(*e*) Co. Litt. 34 b; *Wentworth* v. *Wentworth* (1595), Cro. Eliz. 451; *Bullock* v. *Finch* (1602), 1 Roll. Abr. 682, pl. 8.

(*f*) Co. Litt. 32 a; *Doe* d. *Riddell* v. *Gwinnell* (1841), 1 Q. B. 682; *Williams* v. *Thomas*, [1909] 1 Ch. 713, C. A.

(*g*) Under the Intestates' Estates Act, 1890 (53 & 54 Vict. c. 29) (*Re Rea*, [1902] 1 I. R. 451; *Re Charrière*, [1896] 1 Ch. 912); see title DESCENT AND DISTRIBUTION, Vol. XI., p. 17.

bounds (*h*), except where the nature of the property, as in case of a house or mill, makes it impossible (*i*). The third presentation should be assigned in the case of an advowson (*k*); and, of piscaries and the like, a third of the profits (*l*).

Substitution of rent.

With the consent of the widow, a rent issuing out of the lands subject to dower, or an undivided third, may be assigned in lieu of an assignment by metes and bounds (*m*), and she may, if she thinks fit, elect to take any other compensation offered in lieu of dower (*n*).

Recovery of dower.

377. The remedy for the recovery of dower is an action for the assignment thereof, which is commenced and proceeded with as an ordinary action in the High Court (*o*). Such actions may be brought either in the King's Bench Division or Chancery Division, but are usually brought in the Chancery Division (*p*), as being better adapted for the conduct of the necessary inquiries and proceedings (*q*).

Costs of action.

As a general rule, no costs are awarded in an action for assignment of dower, but they may be allowed where the defendant vexatiously and unreasonably disputes the widow's title (*r*).

Lapse of time.

378. There is no statutory limitation on the widow's action for an assignment of dower, though if for twelve years she does not receive her share of the rents and profits, and makes no claim, she may be barred by her laches (*s*); but, after assignment, an action to

(*h*) Co. Litt. 34 a, 34 b, 32 b, n. 1; *Rowe* v. *Power* (1805), 2 Bos. & P. (N. R.) 1, 34, H. L.; *Hanger* v. *Fry* (1593), Cro. Eliz. 310; *Wentworth* v. *Wentworth* (1595), Cro. Eliz. 451. The existence of a term, the trusts of which are unsatisfied, does not prevent the widow from requiring an assignment by metes and bounds (*Sheaf* v. *Cave* (1857), 24 Beav. 259).

(*i*) Co. Litt. 32 a; *Gilpin* v. *Cookson* (1666), 1 Lev. 182. As to mines and minerals, see *Stoughton* v. *Leigh* (1808), 1 Taunt. 402.

(*k*) 1 Roll. Abr. 683; Co. Litt. 32 b, n. 2. The heir has the first two presentations in order of time (Co. Litt. 379 a; see title ECCLESIASTICAL LAW, Vol. XI., p. 573).

(*l*) Co. Litt. 32 b.

(*m*) Co. Litt. 34 a, b, 32 b, n. 1; *Rowe* v. *Power*, *supra*.

(*n*) *Birmingham* v. *Kirwan* (1805), 2 Sch. & Lef. 444.

(*o*) See title PRACTICE AND PROCEDURE, Vol. XXIII., pp. 99 *et seq.* The old writs of dower, which had been preserved when real actions generally were abolished by the Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 36, were abolished by the Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126); and see title ACTION, Vol. I., p. 46.

(*p*) At common law, the widow was unable to recover her share of rents and profits until assignment of dower; but equity assumed jurisdiction to give her one third of the rents and profits from her husband's death until assignment, and also gave an account of rents and profits against the heir and his representatives; see title EQUITY, Vol. XIII., pp. 41, 42. The equitable practice now prevails, and in effect the widow has two rights, first, a right to one third of the rents and profits from the death, and next, a right to have dower assigned to her (*Williams* v. *Thomas*, [1909] 1 Ch. 713, C. A.).

(*q*) See *Mundy* v. *Mundy* (1793), 4 Bro. C. C. 294. The common law jurisdiction has fallen practically into abeyance (*Williams* v. *Thomas*, *supra*, at p. 720).

(*r*) *Harris* v. *Harris* (1862), 11 W. R. 62; *Lucas* v. *Calcraft* (1782), 1 Bro. C. C. 134; *Worgan* v. *Ryder* (1812), 1 Ves. & B. 20.

(*s*) *Williams* v. *Thomas*, *supra*, overruling *Marshall* v. *Smith* (1865),

SECT. 5. Estate in Dower.

recover the land assigned is subject to the twelve years' statutory limit (*t*), and arrears are only recoverable for the period of six years prior to the commencement of the action (*u*).

Effect of sale of land subject to dower.

379. If, in an administration action, lands subject to dower are sold and the proceeds brought into court, the widow is entitled to be paid the capitalised value of her dower out of the fund (*a*); and, in certain cases, she has a similar right where the lands are compulsorily taken under statutory powers and the purchase-money paid into court (*b*).

SUB-SECT. 4.—*Incidents.*

Widow's estate after assignment.

380. The effect of an assignment of dower, completed by the widow's entry, is to vest in her a freehold estate for life in the property assigned (*c*).

Rights and liabilities.

381. A tenant in dower stands on the same footing with regard to waste as other tenants for life impeachable for waste (*d*), and is therefore answerable for voluntary waste committed either by herself or a stranger (*d*), and may be restrained from committing such waste by injunction (*e*).

Minerals.

If the lands assigned contain mines already opened, she may work them for her own benefit (*f*), but she may not open new mines, and she has the right to prevent the heir from opening them (*g*).

Timber.

She may not cut timber, but if timber was cut after the husband's death and before the lands assigned were set out by metes and bounds, she is entitled during her tenancy in dower to the income of one third of the proceeds (*h*).

Emblements.

A tenant in dower is entitled to emblements, and to dispose of them, as in the case of a tenant for life (*i*), and, if not disposed of, her executors or administrators are entitled to them (*k*). But a widow having a right to freebench in copyhold lands, who forfeits the freebench by a second marriage, has no right to emblements (*l*).

5 Giff. 37; see title LIMITATION OF ACTIONS, Vol. XIX., p. 107; and, as to laches, see title EQUITY, Vol. XIII., pp. 168 *et seq.*, 172, note (*x*).

(*t*) *Williams* v. *Thomas*, [1909] 1 Ch. 713, 725, C. A.

(*u*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 41; *Smith* v. *Walsh* (1838), 1 I. Eq. R. 167; *Bamford* v. *Bamford* (1845), 5 Hare, 203; and see title LIMITATION OF ACTIONS, Vol. XIX., p. 103.

(*a*) *Gleeson* v. *Byrne* (1890), 25 L. R. Ir. 361.

(*b*) *Re Hall's Estate* (1870), L. R. 9 Eq. 179; and see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., p. 115.

(*c*) *Rowe* v. *Power* (1805), 2 Bos. & P. (N. R.) 1, 34, H. L.

(*d*) Co. Litt. 53, 54; 2 Co. Inst. 303; *Hambly* v. *Trott* (1776), 1 Cowp. 371; *Hony* v. *Hony* (1824), 1 Sim. & St. 568; *Dickin* v. *Hamer* (1860), 1 Drew. & Sm. 284; and see p. 175, *ante*.

(*e*) *Whitfield* v. *Bewit* (1724), 2 P. Wms. 240.

(*f*) *Stoughton* v. *Leigh* (1808), 1 Taunt. 402. As to open and new mines, see title MINES, MINERALS, AND QUARRIES, Vol. XX., p. 505.

(*g*) *Dickin* v. *Hamer* (1860), 1 Drew. & Sm. 284; and see title MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 514, 517.

(*h*) *Bishop* v. *Bishop* (1841), 10 L. J. (CH.) 302.

(*i*) Statute of Merton, 1235 (20 Hen. 3, c. 2); Co. Litt. 55; *Fisher* v. *Forbes* (1734), 9 Vin. Abr. 373, pl. 82; and see p. 177, *ante*.

(*k*) Keil. 125, pl. 84.

(*l*) *Oland's Case* (1602), 5 Co. Rep. 116 a.

A tenant in dower is liable to a third of the charges (*m*), and must keep down a third of the interest on mortgages (*n*), to which the estate out of which she is endowed is subject.

Interest on charges.

382. A tenant in dower of a manor or part of a manor may regrant copyholds at the customary rents and services (*o*), and may hold customary courts for that purpose (*p*).

Powers.

A dowress may demise the land assigned to her for any term not exceeding twenty-one years, to take effect in possession at or within one year after the making of the lease, provided that the lease is by deed, at the best rent reasonably obtainable, and without any fine or other benefit in the nature of a fine, the rent being incident to the immediate reversion (*q*). The lease must not be made without impeachment for waste, and must contain a covenant for payment of the rent, and a condition of re-entry on non-payment thereof for twenty-eight days after it becomes due, or any less specified period, and a counterpart of the lease must be executed by the lessee (*q*). Every such demise is valid against the dowress and all persons claiming through or under her deceased husband (*a*).

SECT. 6.—*Concurrent Estates.*

SUB-SECT. 1.—*In General.*

Co-ownership.

383. Land can be held by several persons having simultaneous interests, and these interests may be present or future. According to the nature of the interests, the co-owners are joint tenants (*b*), tenants in common (*c*), or coparceners (*d*); and there is a fourth form of co-ownership known as tenancy by entireties (*e*), confined to dispositions to husband and wife during coverture, where the wife's interest is not her separate property.

SUB-SECT 2.—*Joint Tenancy.*

(i.) *How Arising.*

Creation of joint tenancy.

384. Joint tenancy arises only by the act of a person creating the estate, never by act of law; but the act need not be lawful (*f*).

(*m*) Co. Litt. 241 a. If the husband was a tenant in tail, and a rent was reserved to the donor of the estate tail, the dowress must pay a third of the rent, although the husband died without issue. The estate tail, although determined, being continued for her benefit, the rent to which it is subject is also deemed to continue for the benefit of the donor (*ibid.*).

(*n*) See *Palmes* v. *Danby* (1701), Prec. Ch. 137; *Hamilton* (*Duke*) v. *Mohun* (*Lord*) (1710), 1 P. Wms. 118.

(*o*) *Clarke* v. *Pennifather* (1584), 4 Co. Rep. 23 b.

(*p*) *Gay* v. *Kay* (1599), Cro. Eliz. 661; and see title COPYHOLDS, Vol. VIII., p. 12.

(*q*) Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 46; and see title LANDLORD AND TENANT, Vol. XVIII., pp. 354, 355, 358, 359. A dowress has not the powers of a tenant for life under the Settled Land Act, 1882 (45 & 46 Vict. c. 38), as she does not take under a settlement (see *ibid.*, s. 2 (5)), and is not included in the class of persons who are expressed to have such powers (see *ibid.*, ss. 2 (5), 58 (1)).

(*a*) Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 47.

(*b*) See the text, *infra*.

(*c*) See p. 206, *post*.

(*d*) See p. 210, *post*.

(*e*) See p. 211, *post*.

(*f*) Littleton's Tenures, s. 278; 2 Bl. Com. 180, 181. Joint tenancy

SECT. 6. **Concurrent Estates.**

Thus the tenancy may arise by grant, devise, or disseisin. Where land is granted to two or more persons for the same estate, whether an estate of freehold or of leasehold, and no words are added indicating that the grantees are to take separate interests, they become joint tenants (*g*). Thus, a limitation to two or more persons for their lives makes them joint tenants during their joint lives; and a limitation to them in fee or for years makes them joint tenants in fee, or joint lessees (*h*); but a joint tenancy in fee tail can only be limited to a man and a woman who are capable of lawful marriage (*i*). A joint tenancy is created by similar limitations in a will (*k*). Further, two or more persons who enter into possession without title under such circumstances that the Statute of Limitations (*l*) runs in their

can arise in chattels real and personal as well as in real estate (Littleton's Tenures, s. 281); *Morley* v. *Bird* (1798), 3 Ves. 628, 630; *Shore* (*Lady*) v. *Billingsly* (1687), 1 Vern. 482; *Barnes* v. *Allen* (1782), 1 Bro. C. C. 181; *Willing* v. *Baine* (1731), 3 P. Wms. 113, 115; title PERSONAL PROPERTY, Vol. XXII., pp. 393, 394).

(*g*) 2 Bl. Com. 180; *Morley* v. *Bird*, *supra*. An intention shown that the survivor shall have the whole may, it seems, override even words of severance (*Clerk* v. *Clerk* (1694), 2 Vern. 323; see also *Ward* v. *Everet* (1699), 1 Ld. Raym. 422; *Stratton* v. *Best* (1787), 2 Bro. C. C. 233).

(*h*) Littleton's Tenures, s. 277; 2 Bl. Com. 180; Fearne, Contingent Remainders, p. 35. A trust in a settlement after the death of survivor of husband and wife to permit the children to take the rents to them and their heirs for ever, makes them joint tenants in fee (*Stratton* v. *Best*, *supra*); and, if the estate is created without words of limitation, it is a joint tenancy for lives; thus a limitation by deed to "issue male" gives a joint tenancy for lives (*Fitzherbert* v. *Heathcote* (1771), cited 4 Ves. 794).

(*i*) Co. Litt. 25 b; Challis, Law of Real Property, 3rd ed., p. 366; see note (*l*), p. 202, *post*.

(*k*) 2 Bl. Com. 180; 6 Cru. Dig., tit. 38, Devise, c. 15, s. 1. The gift may be either specific or residuary (*Morley* v. *Bird*, *supra*; *Crooke* v. *De Vandes* (1803), 9 Ves. 197, 204; *Walmsley* v. *Foxhall* (1863), 1 De G. J. & Sm. 605, C. A.; *M'Donnell* v. *Jebb* (1865), 16 I. Ch. R. 359); and either direct or made through the medium of a trust (*Aston* v. *Smallman* (1706), 2 Vern. 556; *Bustard* v. *Saunders* (1843), 7 Beav. 92). A limitation made to next of kin (*Withy* v. *Mangles* (1843), 10 Cl. & Fin. 215, H. L.; *Lucas* v. *Brandreth* (No. 2) (1860), 28 Beav. 274 (settlement); *Baker* v. *Gibson* (1849), 12 Beav. 101 (will)), and whether described as such or referred to as relatives (*Eagles* v. *Le Breton* (1873), L. R. 15 Eq. 148), or to issue (*Hill* v. *Nalder* (1852), 17 Jur. 224; *Hobgen* v. *Neale* (1870), L. R. 11 Eq. 48), or to legal personal representatives (*Walker* v. *Camden* (*Marquis*) (1848), 16 Sim. 329), or next personal representatives (*Stockdale* v. *Nicholson* (1867), L. R. 4 Eq. 359; *Booth* v. *Vicars* (1844), 1 Coll. 6), or to children described as families (*Burt* v. *Hellyar* (1872), L. R. 14 Eq. 160), family (*Wood* v. *Wood* (1843), 3 Hare, 65; *Gregory* v. *Smith* (1852), 9 Hare, 708), or simply as children (*Oates* d. *Hatherley* v. *Jackson* (1742), 2 Stra. 1172; *Binning* v. *Binning*, [1895] W. N. 116; *Mence* v. *Bagster* (1850), 4 De G. & Sm. 162; *Kenworthy* v. *Ward* (1853), 11 Hare, 196; *Noble* v. *Stow* (1859), 29 Beav. 409), may constitute the donees joint tenants. A gift may create a joint tenancy between parents and children (*Mason* v. *Clarke* (1853), 17 Beav. 126; *Jury* v. *Jury* (1881), 9 L. R. Ir. 207; and see *Armstrong* v. *Armstrong* (1869), L. R. 7 Eq. 518). As to a gift to two persons for their joint lives with a contingent remainder over to the survivor in fee, see *Vick* v. *Edwards* (1735), 3 P. Wms. 372; *Re Harrison* (1796), 3 Anst. 836; *Quarm* v. *Quarm*, [1892] 1 Q. B. 184; *Doe* d. *Young* v. *Sotheron* (1831), 2 B. & Ad. 628; *Barker* v. *Gyles* (1727), 3 Bro. Parl. Cas. 104.

(*l*) See title LIMITATION OF ACTIONS, Vol. XIX., pp. 104 *et seq.*

favour acquire a possessory title in joint tenancy (*m*), unless the circumstances are such as to show that they have several interests (*n*).

There are, however, special cases in which, notwithstanding the absence of words of severance, a court of equity will declare a tenancy in common (*o*).

Corporations as joint tenants.

385. At common law, a corporation aggregate cannot be joint tenant with an individual or another corporation aggregate, whether of freeholds (*a*) or of chattels real (*b*); nor can a corporation sole be joint tenant with an individual or another corporation sole of freeholds (*c*), though perhaps it is otherwise as regards chattels real (*d*). But by statute (*e*) bodies corporate are put on the same

(*m*) *Ward* v. *Ward* (1871), 6 Ch. App. 789; *Bolling* v. *Hobday* (1882), 31 W. R. 9; *Smith* v. *Savage*, [1906] 1 I. R. 469. This corresponds to the old rule that a joint estate might be gained by disseisin (Littleton's Tenures, s. 278; 2 Bl. Com. 181), provided the disseisin was to the use of the disseisors; but a disseisin to the use of one made that one sole tenant (Littleton's Tenures, s. 278).

(*n*) Thus, where beneficiaries entitled as tenants in common acquire the legal estate by possession, they acquire it as tenants in common (*MacCormack* v. *Courtney*, [1895] 2 I. R. 97; *Marten* v. *Kearney* (1903), 36 I. L. T. 117); but if some beneficiaries enter to the exclusion of the rest, they acquire the legal title in their own shares as tenants in common, and in the other shares as joint tenants (*Smith* v. *Savage*, [1906] 1 I. R. 469). In *Re Brown, Coyle* v. *M'Fadden*, [1901] 1 I. R. 298, this distinction was overlooked; and see title LIMITATION OF ACTIONS, Vol. XIX., p. 157. In a case where equitable tenants in common acquired the legal estate by grant it was held that the tenancy in common merged in the joint tenancy created by the grant of the legal estate (*Re Selous, Thomson* v. *Selous*, [1901] 1 Ch. 921); and see p. 334, *post*.

(*o*) Thus, a conveyance to purchasers who provide the purchase-money in unequal shares may constitute them tenants in common, notwithstanding the form of the conveyance (*Robinson* v. *Preston* (1858), 4 K. & J. 505; and see *Taylor* v. *Fleming* (undated), cited Freem. (CH.) 23; *Rigden* v. *Vallier* (1751), 3 Atk. 731, 735; *Rea* v. *Williams* (*circa* 1730), Sudgen, Vendors and Purchasers, 11th ed., Appendix xxi. (conveyance); *Aveling* v. *Knipe* (1815), 19 Ves. 441 (contract to purchase)). Parol evidence as to surrounding circumstances and subsequent dealings (*Harrison* v. *Barton* (1860), 1 John. & H. 287; *Palmer* v. *Rich*, [1897] 1 Ch. 134, 143), but not apparently as to statements of the parties (*Harrison* v. *Barton*, *supra*), is admissible evidence of intention to hold as tenants in common. If an intention to create a tenancy in common appears on the face of the conveyance, contribution to the purchase-money in equal shares does not convert such tenancy into a joint tenancy (*Fleming* v. *Fleming* (1855), 5 I. Ch. R. 129). As to the case of mortgagees, see title MORTGAGE, Vol. XXI., p. 117; and, as to purchases by partners, see title PARTNERSHIP, Vol. XXII., pp. 5 *et seq.*, 52. Moreover, provisions for children under a marriage settlement are, if possible, construed as tenancies in common (*Taggart* v. *Taggart* (1803), 1 Sch. & Lef. 84, 88; *Rigden* v. *Vallier*, *supra*; *Marryat* v. *Townly* (1748), 1 Ves. Sen. 102; *Re Bellasis' Trust* (1871), L. R. 12 Eq. 218; *Mayn* v. *Mayn* (1867), L. R. 5 Eq. 150; *Liddard* v. *Liddard* (1860), 28 Beav. 266); and as to the nature of, and usual provisions contained in, such settlements, see title SETTLEMENTS.

(*a*) Bac. Abr., tit. Joint Tenants (B); 2 Bl. Com. 184. As to the acquisition of land by corporations, see title CORPORATIONS, Vol. VIII., pp. 371 *et seq.*

(*b*) See *Law Guarantee and Trust Society* v. *Bank of England* (*Governor & Co.*) (1890), 24 Q. B. D. 406, 411.

(*c*) Littleton's Tenures, s. 297; Co. Litt. 189 b, 190 a.

(*d*) See Co. Litt. 190 c.

(*e*) Bodies Corporate (Joint Tenancy) Act, 1899 (62 & 63 Vict. c. 20).

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footing as individuals as regards the holding of real property in joint tenancy.

(ii.) *Incidents.*

Nature of joint tenants' interests.

386. Each joint tenant has an identical interest in the whole land and every part of it. The title of each arises by the same act (*f*); the interest of each is the same in extent (*g*), nature (*h*), and duration (*i*); in the case of freeholds, the seisin, and, in the case of leaseholds, the possession, is vested in all; none holds any part to the exclusion of the others (*k*); and at common law the interest of each must vest at the same time (*l*). These are the four

(*f*) 2 Bl. Com. 180.

(*g*) That is, until severance, each has the whole, but upon severance each has an aliquot part—a half or less—according to the number of joint tenants. As to severance, see p. 204, *post.*

(*h*) There can be no joint tenancy between owners of a freehold and a term, or of a freehold in possession and a freehold in reversion (Co. Litt. 188 a).

(*i*) That is, the estates, so far as regards the joint tenancy, must be the same, though one joint tenant may have a further estate in severalty. Thus a grant to A. and B. for their lives, and to the heirs of A., gives a joint tenancy to A. and B. for their lives, and the remainder in fee to A. (Littleton's Tenures, s. 285; 2 Bl. Com. 181). Sir E. COKE probably refers to such a limitation when he speaks of "two joint tenants, the one for life and the other in fee" (Co. Litt. 188 a). But in one case the effect of a severance is to give the joint tenants separate estates of different duration. Thus, if there are joint tenants for life, each has an estate for the joint lives, with the chance of taking as survivor an estate for the rest of his life; but upon a severance each has an estate in a moiety for his own life. Hence, unless they should die together, the severance must be to the advantage of the remainderman (Co. Litt. 191 a; 2 Bl. Com. 187); and it is the same if the limitation is to the joint tenants for their lives, and the life of the survivor of them, since this last limitation expresses no more than the law implies and is superfluous (Co. Litt. 191 a; 2 Preston, Abstracts of Titles, 63). In a limitation to two and the survivor of them in fee simple, the reference to the survivor turns the estate into a joint estate for lives with a contingent fee simple in remainder to the survivor (Co. Litt. 191 a, n. 1; *Van Grutten* v. *Foxwell, Foxwell* v. *Van Grutten,* [1897] A. C. 658, 678); see note (*a*), p. 222, *post.* Hence, where it is intended to limit a joint tenancy in fee these words must not be inserted (Co. Litt. 191 a, Butler's note, 1; Challis, Law of Real Property, 3rd ed., p. 368).

(*k*) Joint tenants are seised of the land *per mie et per tout* (Littleton's Tenures, s. 288), which is sometimes erroneously thought to mean by the half and by the whole. But the effect of "*mie*" is "not in the least" (see *Murray* v. *Hall* (1849), 7 C. B. 441, 455, note), and the true meaning is given by Sir E. COKE: "each joint tenant holds the whole and holds nothing, that is, he holds the whole jointly and nothing separately" (Co. Litt. 186 a).

(*l*) Thus, if there is a grant to A. for life, remainder to the right heirs of B. and C., this is a contingent remainder to the heirs of B. and C. as tenants in common, since the heirs are not ascertained till the respective deaths of B. and C., and therefore vest at different times (Co. Litt. 188 a); and a grant to two persons who cannot marry and the heirs of their bodies gives them joint estates for life and several inheritances (Littleton's Tenures, ss. 283, 284; Co. Litt. 182 a *et seq.*; *Cook* v. *Cook* (1706), 2 Vern. 545, 546; see Fearne, Contingent Remainders, 36). As to a similar gift to two persons who can marry, see Co. Litt. 20 b, 26 b; and see *Edwards* v. *Champion* (1853), 3 De G. M. & G. 202, 215; *Re Tiverton Market Act, Ex parte Tanner* (1855), 20 Beav. 374; *Huntley's Case* (1573), Dyer, 326 a; *Pery* v. *White* (1778), 2 Cowp. 777.

unities of title, interest, possession, and time (*m*). But in joint tenancy arising by limitations under the Statute of Uses (*n*), or under devises by will (*o*), the fourth unity is not essential, and the interests of the various joint tenants may vest at different times.

Incidents as regards interests of joint tenants.

387. From the fact that each joint tenant is seised of the whole it follows that the appropriate mode of conveyance when one joint tenant wishes to vest the entire interest in the other joint tenant or joint tenants is by release (*p*) and not by grant (*q*); and that in actions relating to the joint estate, one joint tenant cannot sue or be sued without joining the others (*a*). Moreover, the death of one joint tenant creates no vacancy in the seisin or possession; his interest is extinguished; if there were only two joint tenants, the survivor is now seised or possessed of the whole; if there were more than two, the survivors continue to hold as joint tenants. This incident, which is called the *jus accrescendi*, is the most important feature of joint tenancy (*b*).

Jus accrescendi.

Account between joint tenants.

388. At common law no action of account could be maintained by a joint tenant against another joint tenant who had occupied the whole property unless he had constituted the occupying tenant

(*m*) 2 Bl. Com. 180; 2 Cru. Dig., tit. 18, Joint Tenancy, c. 1, s. 11. Blackstone seems to have been the first to perceive the four unities, and he uses them to analyse the differences between the various forms of co-ownership with much ingenuity. Challis's disparagement seems uncalled for (Challis, Law of Real Property, 3rd ed., p. 367; compare 2 Preston, Abstracts of Titles, 62).

(*n*) 27 Hen. 8, c. 10; see Co. Litt. 188 a; *Hales* v. *Risley* (1673), Poll. 369, 373; *Sussex* (*Earl*) v. *Temple* (1698), 1 Ld. Raym. 310; *Stratton* v. *Best* (1787), 2 Bro. C. C. 233; *Doe* d. *Hallen* v. *Ironmonger* (1803), 3 East, 533; 2 Preston, Abstracts of Titles, 67; Blackstone brings all joint estates within the unity of time by making future uses relate back to the time of the original limitation. But in fact uses are not within this unity.

(*o*) *Oates* d. *Hatterley* v. *Jackson* (1742), 2 Stra. 1172; *Kenworthy* v. *Ward* (1853), 11 Hare, 196; *Morgan* v. *Britten* (1871), L. R. 13 Eq. 28; *Binning* v. *Binning*, [1895] W. N. 116; and see *Surtees* v. *Surtees* (1871), L. R. 12 Eq. 400, 406. But a remainder which is to vest only in such of a class as attain twenty-one years cannot be a joint tenancy (*Woodgate* v. *Unwin* (1831), 4 Sim. 129; see 1 De G. F. & J. 74; *Hand* v. *North* (1863), 10 Jur. (N. S.) 7).

(*p*) Co. Litt. 9 b. In such a case the release operates by extinguishment of the estate of the releasor, and the entirety is then vested exclusively in the other joint tenant or joint tenants. But if the release is made by A., one of three joint tenants A., B. and C., to another B. solely, this operates to pass the estate (*mitter l'estate*) of A. to B., and is a severance as regards that share; so that B. holds the undivided third part as tenant in common with himself and C.; and the undivided two third parts are held by B. and C. as joint tenants (Littleton's Tenures, ss. 304, 312). As to severance, see p. 204, *post*.

(*q*) A grant will, however, be construed as a release (*Chester* v. *Willan* (1670), 2 Saund. 96; *Eustace* v. *Scawen* (1624), Cro. Jac. 696); see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 440.

(*a*) Littleton's Tenures, s. 321; 2 Bl. Com. 182.

(*b*) Littleton's Tenures, s. 280; Co. Litt. 181 a; 2 Bl. Com. 183; 2 Preston, Abstracts of Titles, 57. But it does not follow that the chance of survivorship is always of the same value to each joint tenant. Thus, upon a joint estate to A. and B. for the life of A., if B. dies A. has the whole by survivorship, but if A. dies there is nothing for B. to take (Co. Litt. 181 b).

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his bailiff, so as to make him liable to account as such (*c*); but a right to account as between joint tenants is given by statute (*d*); and an action of account lies under the statute where the joint tenant has been in sole occupation, as well as where he has been in receipt of the rents (*e*).

Contribution.

A joint tenant cannot compel the other joint tenants to contribute to the cost of repairs (*f*); but, in a partition action, he is allowed sums properly spent on substantial repairs and improvements (*g*); and, in such an action, he can be charged with any excess of rents and profits received by him (*h*), or, if he has been in sole occupation, with an occupation rent (*i*).

No fiduciary relationship.

Joint tenants are not in a fiduciary relation to one another so as to be under the disabilities or liabilities attaching to that relation (*j*).

(iii.) *Severance.*

Severance in title.

389. The continuance of the joint tenancy depends on the maintenance of the unities of title, interest, and possession; and the destruction of any of these unities leads to a severance of the tenancy, and to the creation either of a tenancy in common, or of several tenancies (*k*).

The unity of title is destroyed when one joint tenant assigns (*l*) or mortgages (*m*) his share to a third person; if there are only two joint tenants, this creates a tenancy in common between the assignee and the other joint tenant (*l*); if there are more than two, it creates a tenancy in common as between the assignee and the other joint tenants; although, as between the latter, the joint tenancy continues (*n*). The effect is the same where one joint tenant becomes bankrupt (*o*).

Grant for life.

Where one of two joint tenants in fee grants his interest to a stranger for life, the freehold is in the other joint tenant and the

(*c*) Co. Litt. 186 a, 200 b; *Pulteney* v. *Warren* (1801), 6 Ves. 72, 77.

(*d*) Stat. (1705) 4 & 5 Anne, c. 3, s. 27; and in equity one co-owner is liable to account at the suit of the others (*Strelly* v. *Winson* (1685), 1 Vern. 297); and see title PARTITION, Vol. XXI., pp. 851, 852.

(*e*) *Eason* v. *Henderson* (1848), 12 Q. B. 986. As to the effect of leases by joint tenants, see title LANDLORD AND TENANT, Vol. XVIII., p. 343.

(*f*) *Leigh* v. *Dickeson* (1884), 15 Q. B. D. 60, C. A.

(*g*) *Swan* v. *Swan* (1819), 8 Price, 518; *Pascoe* v. *Swan* (1859), 27 Beav. 508; *Leigh* v. *Dickeson, supra;* and see title PARTITION, Vol. XXI., p. 851.

(*h*) *Hyde* v. *Hindly* (1794), 2 Cox, Eq. Cas. 408; *Lorimer* v. *Lorimer* (1820), 5 Madd. 363.

(*i*) *Turner* v. *Morgan* (1803), 8 Ves. 143, 145; *Teasdale* v. *Sanderson* (1864), 33 Beav. 534. But an occupation rent cannot be set off against the occupying co-owner's share of the proceeds of sale as against a mortgagee, though it might have been set off as against him personally (*Hill* v. *Hickin*, [1897] 2 Ch. 579; and see title PARTITION, Vol. XXI., p. 851).

(*j*) *Kennedy* v. *De Trafford*, [1897] A. C. 180; see title TRUSTS AND TRUSTEES.

(*k*) See 2 Bl. Com. 185. As to these unities, see pp. 202, 203, *ante.*

(*l*) Littleton's Tenures, s. 292; *Partriche* v. *Powlet* (1740), 2 Atk. 54; *Daly* v. *Aldworth* (1863), 15 I. Ch. R. 69 (marriage settlement).

(*m*) *York* v. *Stone* (1709), 1 Salk. 158; *Re Pollard's Estate* (1863), 3 De G. J. & Sm. 541, C. A.; and see *Re Sharer, Abbott* v. *Sharer* (1912), 57 Sol. Jo. 60.

(*n*) Littleton's Tenures, s. 294. As to a release by a joint tenant to one of the other joint tenants, see note (*p*), p. 203, *ante.*

(*o*) Since his share vests in his trustee in bankruptcy; see *Re Butler's Trusts, Hughes* v. *Anderson* (1888), 38 Ch. D. 286, C. A.

grantee by different titles, and consequently they are tenants in common (*p*). In such case, however, the joint tenancy is only suspended: if during the suspension either the grantor or the other quondam joint tenant dies, there is no right of survivorship, and the tenancy is permanently severed (*q*): but if the grantee dies during the joint lives, the joint tenancy revives (*r*).

Lease for years.

A lease for years by one of two joint tenants in fee of his share does not, it seems, sever the joint tenancy, and it is binding on the other joint tenant after the death of the lessor, whether the lessee enters during the life of the lessor or not (*s*); but, where a term of years is held in joint tenancy, a lease by one joint tenant for a term less than the residue severs the joint tenancy (*t*).

Contract to sell or covenant to settle.

A mere contract to sell a share (*a*), or a covenant in a marriage settlement to settle a share (*b*), even where the title to the property accrues after the marriage (*c*), or even if the covenantor was an infant at the date of the settlement and has not avoided it at majority (*d*), effects a severance.

Acts not effecting severance.

But a mere declaration does not effect a severance (*e*), nor can a severance be effected by will (*f*), or by the marriage of a female joint tenant (*g*).

(*p*) Littleton's Tenures, s. 302; Co. Litt. 191 b.

(*q*) For the right of survivorship to accrue, the land must be held in joint tenancy at the time of the death of him that dies first (Co. Litt. 188 a).

(*r*) Co. Litt. 193 a; 2 Preston, Abstracts of Titles, 59; but see Challis, Law of Real Property, 3rd ed., 367, n.

(*s*) Littleton's Tenures, s. 289; Co. Litt. 185 a; *contra, Clerk* v. *Clerk* (1694), 2 Vern. 323, where, however, the lease was for eighty years. In *Anon.* (1560), Dyer, 187 a, it was thought that the lessee would hold discharged from the rent, but this is doubtful. A lease of the whole property by both joint tenants, where the rent is reserved to them jointly, does not sever or suspend the joint tenancy (*Palmer* v. *Rich*, [1897] 1 Ch. 134).

(*t*) Co. Litt. 192 a; Littleton's Tenures, s. 319; *Sym's Case* (1584), Cro. Eliz. 33; 2 Preston, Abstracts of Titles, 60; *Cowper* v. *Fletcher* (1865), 6 B. & S. 464, 472; *Connolly* v. *Connolly* (1866), 17 I. Ch. R. 208, 223; but an incumbrance created by a joint tenant, such as a rentcharge or *profit à prendre*, which does not pass an interest in the land itself, is not binding on the surviving joint tenant, since *jus accrescendi præfertur oneribus* (Littleton's Tenures, s. 286; Co. Litt. 185 a; 2 Preston, Abstracts of Titles, 58); and see *Abergavenny's (Lord) Case* (1607), 6 Co. Rep. 78.

(*a*) *Brown* v. *Raindle* (1796), 3 Ves. 256; *Kingsford* v. *Ball* (1852), 2 Giff., Appendix i.; compare *Musgrave* v. *Dashwood* (1688), 2 Vern. 63.

(*b*) *Caldwell* v. *Fellowes* (1870), L. R. 9 Eq. 410; *Baillie* v. *Treharne* (1881), 17 Ch. D. 388.

(*c*) *Re Hewett, Hewett* v. *Hallett*, [1894] 1 Ch. 362.

(*d*) *Burnaby* v. *Equitable Reversionary Interest Society* (1885), 28 Ch. D. 416.

(*e*) *Partriche* v. *Powlet* (1740), 2 Atk. 54; *Moyse* v. *Gyles* (1700), Prec. Ch. 124.

(*f*) 2 Cru. Dig., tit. 18, Joint Tenancy, c. 2, s. 19. The Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), replacing stat. (1815) 55 Geo. 3, c. 192, does not place copyholds on any different footing from freeholds in this respect. Before the earlier statute, however, a surrender to the use of the will worked a severance (Co. Litt. 59 b; *Porter* v. *Porter* (1604), Cro. Jac. 100; *Gale* v. *Gale* (1789), 2 Cox, Eq. Cas. 136; *Edwards* v. *Champion* (1847), 1 De G. & Sm. 75; *Edwards* v. *Champion* (1853), 3 De G. M. & G. 202, 216, 217).

(*g*) Co. Litt. 185 b; *Bracebridge* v. *Cooke* (1572), Plowd. 416; *Palmer* v. *Rich, supra; Re Hoban, Lonergan* v. *Hoban*, [1896] 1 I. R. 401; and see *Armstrong* v. *Armstrong* (1869), L. R. 7 Eq. 518; *Re Barton's Will Trusts* (1852), 10 Hare, 12; *Re Butler's Trusts, Hughes* v. *Anderson* (1888), 38 Ch. D. 286, C. A., overruling on this point *Baillie* v. *Treharne, supra.*

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Severance in interest.

390. The unity of interest is destroyed, and the joint tenancy severed, when there are joint tenants for life, and one of them acquires the entirety of the reversion (*h*); or where there is a tenancy for life, remainder to joint tenants in fee, and the tenant for life grants his estate to one of the joint tenants (*i*).

By agreement.

If joint tenants enter into a mutual agreement to hold as tenants in common there is a severance (*k*).

Conduct.

Subsequent conduct of all the joint tenants may effect a severance (*l*); but the mere fact that the joint tenants employ the land for the purposes of a partnership business does not sever the joint tenancy (*m*). The receipt of a share of the proceeds of sale of part of an estate does not sever the joint tenancy as to the rest (*n*).

Severance of possession.

391. The unity of possession is destroyed, and the joint tenancy severed, upon a partition (*a*) of the land between the joint tenants; and this may be either by agreement or compulsorily (*b*).

SUB-SECT. 3.—*Tenancy in Common.*

(i.) *How Arising.*

Creation of tenancy in common.

392. A tenancy in common differs from a joint tenancy in that it requires neither unity of title, interest, nor time, but only unity of possession (*c*). It may be created (1) by express limitation; (2) by any severance of a joint tenancy or of a tenancy in coparcenary which leaves the unity of possession untouched; or (3) by a

(*h*) *Wiscot's Case* (1599), 2 Co. Rep. 60 b. The one, A., acquiring the reversion holds an undivided moiety in fee; the other moiety is held by the other joint tenant, B., for life, remainder to A. in fee; this diversity of interest severs the joint tenancy (Co. Litt. 182 b).

(*i*) Thus if the limitations are to A. for life, remainder to B. and C. in fee, and A. grants his life estate to B., B. is immediately entitled to one undivided moiety in fee, and to the other moiety for the life of A., with remainder to C. in fee (Co. Litt. 182 b, 183 a). But if A. surrenders his life estate to B., this enures to the benefit of both B. and C., and they are joint tenants in fee in possession (Co. Litt. 183 a, note (2)).

(*k*) 2 Cru. Dig., tit. 18, Joint Tenancy, c. II., s. 46; *Frewen* v. *Relfe* (1787), 2 Bro. C. C. 220; *Williams* v. *Hensman* (1861), 1 John. & H. 546. An agreement by joint tenants for disposal of the property by their respective wills, followed by the making of wills accordingly, operates as a severance (*Re Wilford's Estate, Taylor* v. *Taylor* (1879), 11 Ch. D. 267).

(*l*) *Williams* v. *Hensman, supra; Palmer* v. *Rich*, [1897] 1 Ch. 134; *Wilson* v. *Bell* (1843), 5 I. Eq. R. 501; *Jackson* v. *Jackson* (1804), 9 Ves. 591, 598, 604.

(*m*) *Brown* v. *Oakshot* (1857), 24 Beav. 254; *Ward* v. *Ward* (1871), 6 Ch. App. 789; and see titles EQUITY, Vol. XIII., p. 69; PARTNERSHIP, Vol. XXII., pp. 52, 56. As to co-owners of mines and quarries, see title MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 511—513.

(*n*) *Leak* v. *MacDowall* (1862), 32 Beav. 28, 30.

(*a*) As to partition generally, see title PARTITION, Vol. XXI., pp. 809 *et seq.*

(*b*) At common law coparceners could compel partition, since the joint ownership was imposed on them by act of law; but joint tenants and tenants in common could only make partition by agreement (Littleton's Tenures, ss. 290, 318). A statutory right to partition was conferred on them by stat. (1540) 32 Hen. 8, c. 32; and see title PARTITION, Vol. XXI., p. 834, note (*v*).

(*c*) Littleton's Tenures, s. 292; Co. Litt. 189 a; 2 Bl. Com. 191.

limitation which in form creates a joint tenancy, but under which the ultimate estates will vest at different times (*d*).

By express grant.

393. A tenancy in common is created by express limitation when land is granted to two persons to hold, the one moiety to one in fee simple or for some other estate, and the other moiety to the other, whether for the same or a different estate (*e*); or, without expressly giving the land in moieties, it is sufficient to use words signifying that the grantees are to take divided interests; where, for instance, they are to hold equally between them (*f*), or to them and their respective heirs (*g*).

(*d*) There may also be tenants in common by prescription (Littleton's Tenures, s. 310), *i.e.*, in property a title to which can be gained by prescription. In regard to land, possession does not give a title positively by prescription, but negatively under the Statutes of Limitation. As to the acquisition of such a title in joint tenancy, see pp. 200, 201, *ante*; and see title LIMITATION OF ACTIONS, Vol. XIX., p. 130.

(*e*) Littleton's Tenures, s. 298.

(*f*) 4 Cru. Dig., tit. 32, c. 22, s. 58; *Hamell* v. *Hunt* (1701), Prec. Ch. 163; *Fisher* v. *Wigg* (1701), 1 P. Wms. 14; *Rigden* v. *Vallier* (1751), 2 Ves. Sen. 252; *Goodtitle* d. *Hood* v. *Stokes* (1753), 1 Wils. 341; see *Bois* v. *Roswell* (1668), 1 Lev. 232; *Anon.* (1684), 2 Vent. 365.

(*g*) *Fleming* v. *Fleming* (1855), 5 I. Ch. R. 129 (a case of an annuity charged on land where the authorities are fully discussed). But in a grant to two persons jointly and severally, the word "severally," is void, and they are joint tenants (*Slingsby's Case* (1587), 5 Co. Rep. 18 b, 19 a). A conveyance of land to two persons in moieties creates a tenancy in common between them (Co. Litt. 199 b); and a grant of a moiety creates a tenancy in common between the grantor and grantee (Co. Litt. 190 b). So if a will directs that property is "to be divided" (*Peat* v. *Chapman* (1750), 1 Ves. Sen. 542; *Ackerman* v. *Burrows* (1814), 3 Ves. & B. 54), or "to be equally divided" (*Philips* v. *Philips* (1701), 1 P. Wms. 34; *Barker* v. *Giles* (1725), 2 P. Wms. 280; *Jollife* v. *East* (1789), 3 Bro. C. C. 25; *Turner* v. *Whittaker* (1856), 23 Beav. 196; *Lucas* v. *Goldsmid* (1861), 29 Beav. 657; *Davis* v. *Bennet* (1862), 4 De G. F. & J. 327), or "to be distributed in joint and equal proportions" (*Ettricke* v. *Ettricke* (1767), Amb. 656; *Gibbon* v. *Warner* (1585), 14 Vin. Abr. 484, 485), or that the parties are to "participate" (*Robertson* v. *Fraser* (1871), 6 Ch. App. 696), or if the gift is to or amongst persons "equally" (*Lewen* v. *Dodd* (1595), Cro. Eliz. 443; *Denn* d. *Gaskin* v. *Gaskin* (1777), 2 Cowp. 657), or "share and share alike" (*Heathe* v. *Heathe* (1741), 2 Atk. 121; *Perry* v. *Woods* (1796), 3 Ves. 204), or "in equal shares and proportions" (*Payne* v. *Webb* (1874), L. R. 19 Eq. 26), or "in moieties" (*Harrison* v. *Foreman* (1800), 5 Ves. 207), or "amongst" (*Richardson* v. *Richardson* (1845), 14 Sim. 526), or "between" (*Lashbrook* v. *Cock* (1816), 2 Mer. 70; *A.-G.* v. *Fletcher* (1871), L. R. 13 Eq. 128) the donees; or is given to them "respectively" (*Stephens* v. *Hide* (1734), Cas. *temp.* Talb. 27; *Hawes* v. *Hawes* (1747), 1 Ves. Sen. 13; *Marryat* v. *Townly* (1748), 1 Ves. Sen. 102; *Folkes* v. *Western* (1804), 9 Ves. 456; *Davis* v. *Bennet*, *supra*; *Vanderplank* v. *King* (1843), 3 Hare, 1; *Re Moore's Settlement Trusts* (1862), 10 W. R. 315; but see *Re Hodgson's Trust* (1854), 1 K. & J. 178; *Hobgen* v. *Neale* (1870), L. R. 11 Eq. 48), or "to each" (*Hatton* v. *Finch* (1841), 4 Beav. 186), or to each "and their respective heirs" (*Gordon* v. *Atkinson* (1847), 1 De G. & Sm. 478; *Re Tiverton Market Act*, *Ex parte Tanner* (1855), 20 Beav. 374; *Re Atkinson*, *Wilson* v. *Atkinson*, [1892] 3 Ch. 52), a tenancy in common is created; and see *Thorowgood* v. *Collins* (1627), Cro. Car. 75; *Sheppard* v. *Gibbons* (1742), 2 Atk. 441; *Loveacres* d. *Mudge* v. *Blight* (1775), 1 Cowp. 352. A gift to "next of kin according to the Statute of Distributions" will create a tenancy in common (*Fielden* v. *Ashworth* (1875), L. R. 20 Eq. 410; *Re Richards*, *Davies* v. *Edwards*, [1910] 2 Ch. 74; *Bullock* v.

SECT. 6. Concurrent Estates.

By severance of joint tenancy.

394. A tenancy in common arises on the severance of a joint tenancy or tenancy in coparcenary, where there is no partition of the property (*h*).

Where co-owners' estates vest at different times.

395. A tenancy in common arises under the ultimate limitation in a grant to two persons, who are not capable of marriage, and the heirs of their bodies. The two grantees are joint tenants for life, but the titles of the heirs vest at different times, and they take as tenants in common in tail (*i*); and when, without such prior life estate, the limitation is to the heirs of two living persons, the heirs

Downes (1860), 9 H. L. Cas. 1; *Re Ranking's Settlement Trusts* (1868), L. R. 6 Eq. 601, not following *Re Greenwood's Will* (1862), 8 Jur. (N. S.) 907, and *Horn* v. *Coleman* (1853), 1 Sm. & G. 169); but it is otherwise if the reference to the statute is merely for the purpose of indicating the beneficiaries (*Withy* v. *Mangles* (1843), 10 Cl. & Fin. 215, H. L.; *Elmsley* v. *Young* (1835), 2 My. & K. 780; *Tiffin* v. *Longman* (1852), 15 Beav. 275; *Eagles* v. *Le Breton* (1873), L. R. 15 Eq. 148; compare *Re Gray's Settlement, Akers* v. *Sears*, [1896] 2 Ch. 802). Further, a reference to "shares" will convert what would otherwise be a joint tenancy into a tenancy in common (*Gant* v. *Laurence* (1811), Wight. 395; *Ive* v. *King* (1852), 16 Beav. 46; *Alloway* v. *Alloway* (1843), 4 Dr. & War. 380; *Jones* v. *Jones* (1881), 44 L. T. 642; *Kew* v. *Rouse* (1685), 1 Vern. 353). As a question of construction, expressions apparently indicating a joint tenancy may be controlled by other expressions conferring a tenancy in common (*Re Wilder's Trusts* (1859), 27 Beav. 418; *Booth* v. *Abington* (1857), 3 Jur. (N. S.) 835; *Oakley* v. *Wood* (1867), 16 L. T. 450; *Paterson* v. *Rolland* (1860), 28 Beav. 347; *Ryves* v. *Ryves* (1871), L. R. 11 Eq. 539; see, however, *Cookson* v. *Bingham* (1853), 3 De G. M. & G. 668, C. A.; *Jolliffe* v. *East* (1789), 3 Bro. C. C. 25; *Jury* v. *Jury* (1881), 9 L. R. Ir. 207; *Barker* v. *Gyles* (1727), 3 Bro. Parl. Cas. 104; *Edwardes* v. *Jones* (1864), 33 Beav. 348; *Yarrow* v. *Knightly* (1878), 8 Ch. D. 736, C. A.). As to the effect of words of survivorship in a gift, see *Russell* v. *Long* (1799), 4 Ves. 551; *Bindon* (*Lord*) v. *Suffolk* (*Earl*) (1707), 1 P. Wms. 96; *Perry* v. *Woods* (1796), 3 Ves. 204; *Ashford* v. *Haines* (1851), 21 L. J. (CH.) 496; compare *Moore* v. *Cleghorn* (1847), 10 Beav. 423; *Haddelsey* v. *Adams* (1856), 22 Beav. 266. On the other hand, expressions indicating a tenancy in common may be modified by a subsequent clear expression of intention to create a joint tenancy (*Stephens* v. *Hide* (1734), Cas. *temp.* Talb. 27; *Malcolm* v. *Martin* (1790), 3 Bro. C. C. 50; *Armstrong* v. *Eldridge* (1791), 3 Bro. C. C. 215; *Daly* v. *Aldworth* (1863), 15 I. Ch. R. 69; *Cranswick* v. *Pearson*, *Pearson* v. *Cranswick* (1862), 31 Beav. 624; *Townley* v. *Bolton* (1832), 1 My. & K. 148; *M'Dermott* v. *Wallace* (1842), 5 Beav. 142; *Pearce* v. *Edmeades* (1838), 3 Y. & C. (EX.) 246; *Ashley* v. *Ashley* (1833), 6 Sim. 358; *Begley* v. *Cook* (1856), 3 Drew. 662; *Alt* v. *Gregory* (1856), 8 De G. M. & G. 221, C. A.; *Hurd* v. *Lenthall* (1649), Sty. 211; compare *Willes* v. *Douglas* (1847), 10 Beav. 47; *Arrow* v. *Mellish* (1847), 1 De G. & Sm. 355; *Ewington* v. *Fenn* (1852), 16 Jur. 398; *Hawkins* v. *Hamerton* (1848), 16 Sim. 410; *Re Drakeley's Estate* (1854), 19 Beav. 395; *Turner* v. *Whittaker* (1856), 23 Beav. 196; *Re Laverick's Estate* (1854), 18 Jur. 304; *Archer* v. *Legg* (1862), 10 W. R. 703; *Wills* v. *Wills* (1875), L. R. 20 Eq. 342; *Re Hutchinson's Trusts* (1882), 21 Ch. D. 811; *Abrey* v. *Newman* (1853), 16 Beav. 431; *Swan* v. *Holmes* (1854), 19 Beav. 471; *Sarel* v. *Sarel* (1856), 23 Beav. 87; *Lill* v. *Lill* (1857), 23 Beav. 446; *Brown* v. *Jarvis* (1860), 2 De G. F. & J. 168). There may be a tenancy in common with an express gift of benefit of survivorship (*Doe* d. *Borwell* v. *Abey* (1813), 1 M. & S. 428; *Hatton* v. *Finch* (1841), 4 Beav. 186; *Re Drakeley's Estate, supra*; *Conmee* v. *Taaffe* (1861), 12 I. Ch. R. 338; *Haddelsey* v. *Adams, supra*; Challis, Law of Real Property, 3rd ed., p. 368).

(*h*) Littleton's Tenures, s. 292. As to severance of a joint tenancy, see p. 204, *ante*; and, as to coparcenary, see p. 210, *post*).

(*i*) Littleton Tenures, s. 283; *Hales* v. *Risley* (1673), Poll. 369, 373; 2 Bl. Com. 192; 2 Preston, Abstracts of Titles, 76.

have contingent remainders as tenants in common, since their estates will not vest at the same time (*k*).

(ii.) *Incidents.*

Nature of tenancy in common.

396. Inasmuch as tenants in common are not required to have unity of title, they have several freeholds, while joint tenants and coparceners have one freehold (*l*); and inasmuch as they are not required to have unity of interest, they may be entitled to the land in unequal shares, and for estates which are unequal in duration. Thus, the land may be limited in unequal shares on the creation of the tenancy, or, after limitations in equal shares, inequality may arise from several of these shares becoming vested in one of the tenants in common (*m*); and, although the entire fee in each share must be disposed of either in possession, remainder, or reversion, the different shares may be subject to different limitations (*n*). The separation of interests excludes the right of survivorship, and on the death of one tenant in common, his share passes according to its own limitation (*o*).

Unity of possession.

But tenancy in common resembles joint tenancy in matters depending on unity of possession. The occupation is undivided, and neither owner can claim a separate part save by obtaining partition (*p*). One tenant in common who receives more than his share of the rents and profits is liable to account to the others (*q*), and a tenant in common will be restrained by injunction from destructive waste (*r*).

(iii.) *Determination.*

How determined.

397. A tenancy in common may be determined by the union of the various interests, whether by acquisition *inter vivos* or by

(*k*) *Windham's Case* (1589), 5 Co. Rep. 7 a, 8 a, resolution 3; Challis, Law of Real Property, 3rd ed., p. 369. In a limitation to the right heirs of husband and wife, the heir to both—that is, a child—takes, and if no preceding estate is given to the husband and wife, he takes as purchaser (*Roe* d. *Nightingale* v. *Quartley* (1787), 1 Term Rep. 630); but such a limitation in a will may be construed to give an estate tail (*Wright* v. *Vernon* (1854), 2 Drew. 439; (1858) 7 H. L. Cas. 35).

(*l*) Co. Litt. 189 a; 2 Preston, Abstracts of Titles, 75.

(*m*) See Challis, Law of Real Property, 3rd ed., p. 370.

(*n*) This follows from the consideration that each share is a separate freehold (Challis, Law of Real Property, 3rd ed., p. 370); it can, accordingly, be limited in any way possible for a freehold independently of the other shares. As to limitations of cross-remainders in undivided shares, see *ibid.*, pp. 270 *et seq.*; title SETTLEMENTS.

(*o*) 2 Bl. Com. 194.

(*p*) "Only this property is common to both, namely, that their occupation is undivided, and neither of them knoweth his part in several" (Co. Litt. 189 a). As to partition generally, see title PARTITION, Vol. XXI., pp. 809 *et seq.* As to ownership of a party wall, see *Watson* v. *Gray* (1880), 14 Ch. D. 192; title BOUNDARIES, FENCES, AND PARTY-WALLS, Vol. III., p. 134. As to leases by tenants in common, see title LANDLORD AND TENANT, Vol. XVIII., pp. 343, 344.

(*q*) There is the same statutory liability to account as in the case of joint tenants; see p. 204, *ante*; and see title PARTITION, Vol. XXI., p. 851.

(*r*) *Hole* v. *Thomas* (1802), 7 Ves. 589; *Arthur* v. *Lamb* (1865), 2 Drew. & Sm. 428; *Bailey* v. *Hobson* (1869), 5 Ch. App. 180. As to the liability of a tenant for life for waste, see pp. 175 *et seq.*, *ante*.

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descent, in the same person, who therefore holds the entirety of the land as sole tenant. It is also determined by destruction of the unity of possession. This is effected by partition, whether by agreement or compulsorily (*s*).

SUB-SECT. 4.—*Coparcenary.*

(i.) *How Arising.*

Creation of coparcenary.

398. Coparcenary arises where two or more persons take hereditaments by the same title by descent (*t*). This may be at common law, or by special custom (*u*). Coparcenary arises at common law where upon the death of a man seised of land in fee or in tail the land descends upon two or more females as heirs general or heirs in tail (*t*); it arises by custom where, according to the custom of gavelkind, the land descends upon two or more male persons (*a*). Such persons are called coparceners; they constitute but one heir to their ancestor; they have a joint seisin, and they have equal rights in the land as regards each other (*b*). But under a devise to the testator's right heirs, if the heirs are coheiresses they take as joint tenants and not as coparceners (*c*).

(ii.) *Incidents.*

Incidents of coparcenary.

399. As regards third persons, coparceners are treated as having a joint freehold in the land, and all of them must sue or be sued in actions affecting the land (*d*); and for some purposes they are regarded as having a joint interest *inter se*, so that one can convey her share to another by release (*e*). In general, however, their rights *inter se* resemble those of tenants in common. Each is entitled to an undivided share of the land, and that share can be transferred to another by assignment or devise or release (*f*); there is no *jus accrescendi*, and on the death of one coparcener her share devolves upon those who claim under her by devise (*g*) or by descent, or, in the case of an estate tail, under the entail; and the coparcenary then continues between her successors in title and the other coparceners (*h*). Coparceners have the same remedy for account

(*s*) 2 Bl. Com. 194. As to partition, see title PARTITION, Vol. XXI., pp. 809 *et seq.*

(*t*) Littleton's Tenures, s. 254.

(*u*) Littleton's Tenures, s. 241; 2 Bl. Com. 187; and see title DESCENT AND DISTRIBUTION, Vol. XI., p. 10.

(*a*) Littleton's Tenures, s. 265; and see pp. 151 *et seq.*, *ante*.

(*b*) Littleton's Tenures, s. 241; 2 Preston, Abstracts of Titles, 69.

(*c*) *Owen* v. *Gibbons*, [1902] 1 Ch. 636, C. A.; *Berens* v. *Fellowes*, [1887] W. N. 58. Formerly under such a devise the heiresses would have taken by descent as their better title, and therefore as coheiresses; but, under the Inheritance Act, 1833 (3 & 4 Will. 4, c. 106), s. 3, they take as devisees; and see title DESCENT AND DISTRIBUTION, Vol. XI., p. 8.

(*d*) Co. Litt. 164 a; and see *Re Greenwood's Trust* (1884), 27 Ch. D. 359.

(*e*) Co. Litt. 9 b; 2 Preston, Abstracts of Titles, 69.

(*f*) Co. Litt. 164 a.

(*g*) 2 Preston, Abstracts of Titles, 70.

(*h*) Co. Litt. 164 a. It is said that if parceners make a lease reserving a rent, they hold the rent like the reversion in coparcenary; but if afterwards they grant the reversion, excepting the rent, they then hold the rent as

between themselves as other co-owners (*i*) and will be restrained from destructive waste (*k*); and, on partition, they can obtain any necessary adjustments as regards inequality of receipt of rents and profits and expenditure (*l*).

(iii.) *Determination.*

How determined.

400. Coparcenary is put an end to by partition, either voluntary or compulsory (*m*), by an alienation by one coparcener of her share (*n*), and by all the shares becoming vested in one coparcener (*o*).

SUB-SECT. 5.—*Tenancy by Entireties.*

Tenancy by entireties.

401. Where before the 1st January, 1883 (*p*), lands were conveyed to or devolved upon husband and wife during the coverture (*q*) in such manner that, but for the marriage, they would take as joint tenants, they took as tenants by entireties (*r*). Inasmuch as they were regarded as one person, each was tenant of the whole and no less—*per tout et non per mie*—and they could not sever the tenancy and have moieties, nor could the husband alone alienate the land (*s*). They could join to alienate it by a conveyance binding on the wife, but otherwise the survivor took the whole (*a*). The

joint tenants (2 Preston, Abstracts of Titles, 74). But on a grant to two parceners of a rent for owelty of partition, they will hold it as parceners and not as joint tenants (*ibid.*); and a rent created on an alienation "by parceners in fee in favour of them and their heirs," is held in coparcenary (Co. Litt. 169 b; 2 Preston, Abstracts of Titles, 74).

(*i*) They are not expressly mentioned in stat. (1705) 4 & 5 Anne, c. 3, s. 27, which makes joint tenants and tenants in common liable to account (see p. 204, *ante*), but apparently they are within the Act; compare 2 Co. Inst. 403, on the construction of Statute of Westminster II. (1285), 13 Edw. 1, c. 22, repealed by the Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict. c. 59), s. 2.

(*k*) The reason for the intervention of equity is the same in the case of coparceners as of other co-owners (see p. 209, *ante*). Coparceners were excluded from the remedy of Statute of Westminster II. (1285), 13 Edw. 1, c. 22, for waste in corporeal hereditaments held in common on the ground that they could compel partition at common law (2 Co. Inst. 403); and a coparcener, like other co-owners, has no direct remedy to compel the other coparceners to join in repairing the property (see p. 203, *ante*). As to the liability of a tenant for life for waste, see pp. 175 *et seq.*, *ante*.

(*l*) See *Leigh* v. *Dickeson* (1884), 15 Q. B. D. 60, C. A.; and see title PARTITION, Vol. XXI., p. 851.

(*m*) See title PARTITION, Vol. XXI., pp. 809 *et seq.*

(*n*) Littleton's Tenures, s. 309; on alienation by one coparcener of her share the tenancy becomes a tenancy in common (see p. 204, *ante*).

(*o*) See 2 Bl. Com. 191.

(*p*) *I.e.*; before the commencement of the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75).

(*q*) See Co. Litt. 326 a; 2 Preston, Abstracts of Titles, 39.

(*r*) 2 Bl. Com. 182; 2 Preston, Abstracts of Titles, 39; see *Purefoy* v. *Rogers* (1672), 2 Lev. 39; *Back* v. *Andrews* (1691), 2 Vern. 120 (conveyance); *Doe* d. *Freestone* v. *Parratt* (1794), 5 Term Rep. 652, 654.

(*s*) Co. Litt. 187 b, 310 a; Littleton's Tenures, s. 665; and see titles HUSBAND AND WIFE, Vol. XVI., p. 354; PARTITION, Vol. XXI., p. 815.

(*a*) *Thornley* v. *Thornley*, [1893] 2 Ch. 229, 233; 2 Preston, Abstracts of Titles, 41. As to the effect of divorce, see title HUSBAND AND WIFE, Vol. XVI., p. 355.

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tenancy might exist in freehold estates, whether in fee, in tail, or for life, and also in chattels real (*b*). Since the 31st December, 1882, the tenancy in such a case is an ordinary joint tenancy (*c*).

SECT. 7.—*Remainders and Reversions.*

SUB-SECT. 1.—*Nature of the Estate.*

Particular estates and remainders.

402. The estate in fee simple in land can be divided into two or more successive estates (*d*). The first is the estate in possession, and is called the "particular estate" (*e*). This may be an estate for years, an estate for life, or an estate tail (*f*). If there is only one subsequent estate, it is still an estate in fee simple, but not in possession. If by one deed (*g*) the grantor grants the particular estate to one person and the subsequent estate to another, the subsequent estate is called a "remainder" (*h*); otherwise the subsequent estate continues in the grantor and is called a "reversion (*i*). If a succession of estates are granted, all the estates between

(*b*) 2 Preston, Abstracts of Titles, 39.

(*c*) *Thornley* v. *Thornley*, [1893] 2 Ch. 229, 233; and see, further, as to tenancy by entireties, 2 Preston, Abstracts of Titles, 39 *et seq.* A disposition in favour of husband and wife and a third party before the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), was construed upon the footing of husband and wife being one, and they took only a moiety between them (Littleton's Tenures, s. 291; 2 Preston, Abstracts of Titles, p. 40); and apparently this has not been altered by the statute (*Re Jupp, Jupp* v. *Buckwell* (1888), 39 Ch. D. 148; compare *Re March, Mander* v. *Harris* (1883), 24 Ch. D. 222, reversed on another point (1884), 27 Ch. D. 166, C. A.); but it is only a rule of construction, and readily gives way to an indication of an intention that the husband and wife shall take separate shares (*Re March, Mander* v. *Harris* (1884), 27 Ch. D. 166, C. A., *per* COTTON, L.J., at p. 170; *Re Dixon, Byram* v. *Tull* (1889), 42 Ch. D. 306, 308; *Re Gue, Smith* v. *Gue* (1892), 61 L. J. (CH.) 510; and see title HUSBAND AND WIFE, Vol. XVI., p. 354). Where the rule prevails, it seems that a conveyance or devise to husband and wife and a third party cannot now create a joint tenancy; the shares are one quarter, one quarter, and a half, and inequality of shares is incompatible with a joint tenancy; see p. 202, *ante*. Hence the tenancy must be in common.

(*d*) Similarly an estate less than a fee simple can be divided into an estate smaller than itself with remainders or reversion over; hence an estate for life (see pp. 173 *et seq.*, *ante*) admits of a term being limited out of it, even for 1,000 years, since in law a freehold is a greater estate than a term of years (Co. Litt. 46 a; *Derby (Earl)* v. *Taylor* (1801), 1 East, 502); and an estate *pur autre vie* (see pp. 178 *et seq.*, *ante*) can be limited to persons in succession (*Low* v. *Burron* (1734), 3 P. Wms. 262; *Pickersgill* v. *Grey* (1862), 30 Beav. 352.)

(*e*) Co. Litt. 143 a.

(*f*) Fearne, Contingent Remainders, 9th ed., p. 3, note (*c*).

(*g*) Fearne, Contingent Remainders, p. 302; Challis, Law of Real Property, 3rd ed., p. 78; see 2 Bl. Com. 167.

(*h*) A remainder is "a residue of an estate in land depending upon a particular estate, and created together with the same" (Co. Litt. 49 a; see *ibid.*, 143 a; 1 Preston on Estates, 90). But etymologically and historically it is so called not because it remains over, but because it remains out when the particular estate comes to an end (Pollock and Maitland, History of English Law, Vol. II., p. 21).

(*i*) "A reversion is where the residue of the state always doth continue in him that made the particular estate, or where the particular estate is derived out of his estate" (Co. Litt. 22 b). It is so called because the land returns to the grantor on the determination of the particular estate.

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the particular estate and the ultimate estate are remainders. The ultimate estate is always an estate in fee simple, and is either a remainder or reversion, according as it is granted out or continues in the grantor (*j*). In a real estate settlement the land is usually limited (*k*) for one or more successive life estates, followed by a succession of estates tail, with an ultimate reversion to the settlor and his heirs (*l*). The estate of the settlor is the original estate; the estates which he carves out of it are derivative estates (*m*).

Possibility of reverter.

The grant of a fee simple, notwithstanding that it is determinable, is in law considered as the grant of the whole fee (*n*). Hence there is no remnant of the fee left for the grantor to grant as a remainder, nor is there any reversion in himself, but, in the case of conditional or determinable fees, he has an interest which is called a "possibility of reverter" (*o*). A fee simple absolute can only determine for want of heirs, and then it goes to the lord by escheat (*p*).

Creation of remainder in grantor.

403. At common law, a tenant in fee simple could not limit the fee so as to create an ultimate remainder in himself or his heirs; such a remainder was void, and the grantor retained the ultimate estate as a reversion (*q*); but now, under such a limitation, the grantor

The effect is the same, whether the grant is silent as to the residue of the estate or reserves it to the grantor as a reversion or remainder. A reversion upon a term of years is for some purposes a true reversion. Rent service, when reserved, is incident to the reversion, and the lessee is said to hold of the lessor (see p. 147, *ante;* and see title LANDLORD AND TENANT, Vol. XVIII., pp. 464 *et seq.*). Moreover, the lessor is not entitled to the actual possession of the land. But the species of possession known as "seisin" (see p. 214, *post*) is in the reversioner, or, if a remainder is granted at the same time as the term, it is in the remainderman; and, as to matters depending on seisin, the reversion or remainder ranks as an estate in possession. In limitations after a term the remainder is created by immediate grant of the fee subject to the term (see Challis, Law of Real Property, 3rd ed., p. 100). A reversion cannot be subsequently turned into a remainder by being alienated; it still continues to be a reversion.

(*j*) See Fearne, Contingent Remainders, 9th ed., p. 3, note (4).

(*k*) See Encyclopædia of Forms and Precedents, Vol. XIII., pp. 289 *et seq.;* title SETTLEMENTS.

(*l*) In addition, provision is made for jointure rentcharges and portions; see title SETTLEMENTS.

(*m*) Challis, Law of Real Property, 3rd ed., p. 68; and for a list of the particular estates which can be derived out of estates less than the fee simple, see *ibid.*, pp. 72 *et seq.;* but in practice settlements are usually made by carving estates out of the fee simple.

(*n*) Fearne, Contingent Remainders, 9th ed., p. 13, n.; and, as to determinable fees, see pp. 170, 171, *ante.*

(*o*) Fearne, Contingent Remainders, 9th ed., p. 381, note (a); that is, by the determination of a common law fee for condition broken, or by the natural determination of a determinable fee (Challis, Law of Real Property, 3rd ed., p. 82; and see p. 237, *post*). As to fees upon condition, see pp. 168—170, *ante;* as to determinable fees, see pp. 170, 171, *ante.*

(*p*) See p. 145, *ante;* and see title DESCENT AND DISTRIBUTION, Vol. XI., p. 23.

(*q*) Co. Litt. 22 b; 2 Bl. Com. 176; *Fenwick* v. *Mitford* (1589), 1 Leon. 182; *Reed* v. *Erington* (1594), Cro. Eliz. 321; *Bingham's Case* (1601), 2 Co. Rep. 91 a, 91 b. "A man cannot either by conveyance at the common law, by limitation of uses, or devise, make his right heir a purchaser" (*Pibus* v. *Mitford* (1674), 1 Vent. 372); Fearne, Contingent Remainders,

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takes the ultimate estate as a purchaser by virtue of the assurance, and is not considered as entitled thereto as of his former estate or part thereof (*r*).

Reversions.

404. An owner in fee simple who grants out the whole fee in successive estates divests himself entirely of the feudal tenure, just as if he granted the fee simple as a single estate; and the grantee of the particular estate holds of the superior lord and not of the remainderman; but, if the owner grants only a particular estate and keeps the reversion in himself, the grantee of the particular estate holds of him (*s*). Where rent is reserved, this is incident to the reversion and passes on a grant of the reversion unless excepted (*t*).

SUB-SECT. 2.—*Rules for Creation of Remainders in General.*

Freehold estates.

405. Estates of freehold tenure are estates in fee simple, estates in fee tail and estates for life. The first two are estates of inheritance (*a*), the third is an estate of mere freehold (*b*).

Seisin of freehold.

An owner in possession for an estate of freehold is said to be "seised" of the land, and his possession is called "seisin" (*c*). The

Possession.

word "possession," as applied to land, denotes, in its narrowest meaning, possession for a chattel interest; hence, as between the freeholder and the lessee, the freeholder is seised and the lessee

p. 51; see *Bedford* (*Earl*) v. *Russell* (1592), Poph. 3; *Chudleigh's Case*, (1595), 1 Co. Rep. 120 a, 130 a; *Godbold* v. *Freestone* (1694), 3 Lev. 406). But, under an executory trust, such as a direction to convey in a certain event to the heirs of the grantor, the person who answers the description of heir at the time when the event happens may take as purchaser (*Locke* v. *Southwood* (1831), 1 My. & Cr. 411; on appeal, *sub nom. Bush* v. *Locke* (1835), 3 Cl. & Fin. 721, H. L.).

(*r*) Inheritance Act, 1833 (3 & 4 Will. 4, c. 106), s. 3 (second part); and see title DESCENT AND DISTRIBUTION, Vol. XI., p. 8. The rule in question, under which the heir could not take as purchaser, was confined to cases of remainders, and under an executory limitation (see p. 232, *post*) the heir could take as purchaser (see *Loyd* v. *Carew* (1697), Prec. Ch. 72; Fearne, Contingent Remainders, pp. 275, 276); and perhaps the statute operates only where the grantor would formerly have been in of his former estate; so that an executory limitation to the heirs of the grantor would still take effect in favour of the heir as *persona designata* and not in favour of the grantor.

(*s*) Burton, Compendium of the Law of Real Property, 3rd ed., p. 10, note 30. The Statute Quia Emptores (1290), 18 Edw. 1, c. 1 (see p. 144, *ante*), did not apply to the grant of life estates and estates tail; hence upon such grants the donee holds under the donor, provided the donor does not grant the residue of the estate by way of remainder (Challis, Law of Real Property, 3rd ed., p. 22; see Littleton's Tenures, ss. 214, 215; Co. Litt. 143 a).

(*t*) Fealty is inseparably incident to the reversion, rent only separably (Co. Litt. 151 b).

(*a*) Littleton's Tenures, s. 9.

(*b*) Co. Litt. 266 b, Butler's note (1); Challis, Law of Real Property, 3rd ed., p. 99; and see p. 173, *ante*.

(*c*) Co. Litt. 17 a. In early times "seisin" and "possession" were synonymous, and it was customary to speak of seisin of chattels as well as seisin of land (Maitland, "Seisin of Chattels," Law Quarterly Review Vol. I., p. 324; and see p. 147, *ante*). As to seisin generally, see Pollock and Maitland, History of English Law, Vol. II., pp. 29 *et seq.*; as to possession of chattels, see *ibid.*, pp. 150 *et seq.*

possessed of the land. The possession of the lessee supports the seisin of the lessor (*d*). In a wider sense, possession denotes occupation under any title, whether of freehold or leasehold, or even without title (*e*), and it may include receipt of rent (*f*).

Seisin in law and in deed.

406. Seisin may be either seisin in deed or seisin in law (*g*). A person in actual possession of land or in receipt of rent from the occupying tenant under a freehold title has seisin in deed (*h*). An heir-at-law becoming entitled to the freehold on the death of an ancestor who dies seised has seisin in law if the actual possession is then vacant (*i*). But, if a tenant is in possession, the possession of the tenant is credited to the heir, though no rent has been received by him, and the heir has an immediate seisin in deed (*k*). Similarly

(*d*) See *Bushby* v. *Dixon* (1824), 3 B. & C. 298.

(*e*) See title LIMITATION OF ACTIONS, Vol. XIX., p. 157.

(*f*) See Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2 (10) (i.).

(*g*) As to the distinction, see Co. Litt. 266 b, Butler's note (1); *Eager* v. *Furnivall* (1881), 17 Ch. D. 115, 120; *Leach* v. *Jay* (1878), 9 Ch. D. 42, C. A. The distinction applies both to corporeal and incorporeal hereditaments (Challis, Law of Real Property, 3rd ed., p. 233; *Murray* v. *Thorniley* (1846), 2 C. B. 217, 223, 224).

(*h*) This is the same as Sir E. COKE'S "actually seised"; that is, either by entry, or by possession of the lessee for years or the like (Co. Litt. 243 a). And, as against an adverse claimant, exclusive occupation is not necessary to give seisin in deed. Entry on the land by the person entitled to the freehold vests in him, for legal purposes, the actual possession, and consequently the seisin in deed, notwithstanding that an adverse claimant is on the land (*Reading* v. *Royston* (1703), 1 Salk. 242; *Jones* v. *Chapman* (1849), 2 Exch. 803, 821, Ex. Ch.; *Lows* v. *Telford* (1876), 1 App. Cas. 414; see Littleton's Tenures, ss. 417, 418, 701); and formerly, if he dared not enter, a claim made near the land was treated as an actual entry so as to give him seisin (Littleton's Tenures, s. 419; Co. Litt. 253 b); but the effect of such claim is abolished (Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 11. As to delivery of land to and recovery by lessors for years, see title LANDLORD AND TENANT, Vol. XVIII., pp. 556 *et seq.*

(*i*) It is the same whether the ancestor was lawfully entitled or not. If he was actually seised, although as a disseisor, a seisin in law is cast upon his heir (Littleton's Tenures, s. 448). Sir E. COKE speaks of freehold in deed as natural seisin and freehold in law as civil seisin; but this is not the ordinary use of "civil" in relation to possession. Civil possession, —the Roman *civilis possessio*—is that which entitles the possessor to the civil remedies for the protection and recovery of possession; *i.e.*, the possession of an owner or lessee as opposed to the possession of a servant. Seisin in deed is, in this sense, both civil and natural possession; seisin in law is not natural possession, though to a certain extent it corresponds to civil possession. In English law, the distinction is not of importance so much in regard to possessory remedies as in regard to the rights of property which depend on seisin. Thus seisin in deed is necessary to give curtesy; while seisin in law is sufficient for dower; see pp. 184, 191, *ante*; Pollock and Maitland, History of English Law, Vol. II., p. 433. Previous to the Inheritance Act, 1833 (3 & 4 Will. 4, c. 106), descent was traced from the person last seised, and this required actual seisin (*Goodtitle* d. *Newman* v. *Newman* (1774), 3 Wils. 516, 526; see title DESCENT AND DISTRIBUTION, Vol. XI., p. 8, note (*g*)). As to "actual seisin," see *Tuthill* v. *Rogers* (1844), 1 Jo. & Lat. 36; and see title LIMITATION OF ACTIONS, Vol. XIX., p. 155. Seisin in deed, though wrongful, is a root of title; see p. 328, *post*.

(*k*) Co. Litt. 15 a, 243 a; *Goodtitle* d. *Newman* v. *Newman*, *supra*; *Bushby* v. *Dixon*, *supra*; *Tuthill* v. *Rogers* *supra*, at p. 76; *Lyell* v. *Kennedy*, *Kennedy* v. *Lyell* (1889), 14 App. Cas. 437, 456; and see *De Grey* v. *Richardson* (1747), 3 Atk. 469 (tenancy by the curtesy).

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a devisee has at once a seisin in law if the possession is vacant (*l*); and, apparently, a seisin in deed if a tenant is in possession. But while land is vested in the legal personal representatives of the deceased under the Land Transfer Act, 1897 (*m*), the seisin in law of the heir or devisee is no doubt excluded.

Abeyance of freehold.

407. Limitations of land operating at common law are subject to the rule that there must always be a tenant of the freehold; in other words, the freehold must never be in abeyance (*n*). Hence an estate of freehold cannot at common law be limited to commence from a future day save by way of remainder after a particular estate.

No limitation at common law *in futuro*.

408. A conveyance which divests the freehold from the grantor must at the same moment vest it in the grantee (*o*). This result is expressed by the rule that an estate of freehold cannot, at common law, be limited to commence *in futuro* (*p*). Similarly a

(*l*) Co. Litt. 111 a.

(*m*) 60 & 61 Vict. c. 65, s. 1 (1); see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 238.

(*n*) Because there must, in theory, be always a person responsible for the services (see pp. 138 *et seq.*, *ante*) incident to the tenure of the land, and against whom a claimant to the land might bring a real action (*Freeman* d. *Vernon* v. *West* (1763), 2 Wils. 165). The rule has survived these reasons, and it has now become an absolute rule that the immediate freehold cannot be placed in abeyance by any act of the parties (1 Preston on Estates, 216); though it may, in certain cases, be placed in abeyance by operation of law: where, for instance, a corporation sole is seised of land, the freehold is in abeyance between the death of one incumbent and the appointment of his successor. Further, although the freehold must not be in abeyance, yet the inheritance may be. Thus, it is sufficient if there is a tenant for an immediate life estate. The freehold is full, though the inheritance may not have vested in an ascertained person (*Cunningham* v. *Moody* (1748), 1 Ves. Sen. 174, 177).

(*o*) Under the old law, a feoffment with livery of seisin took effect according to the terms of the feoffment, whether this was verbal (see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 367, note (*t*)) or by deed. Hence, where the feoffment purported to create a future estate, the livery was void. A feoffor could not make present livery to a future estate, and nothing passed (*Barwick's Case* (1597), 5 Co. Rep. 93 b, 94 b). But since the feoffment only took effect from the livery of seisin, it was good if the livery was not made till after the day fixed for the commencement of the estate (1 Preston on Estates, 222). Similarly, since a deed takes effect from delivery (see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 382), a grant of a future estate by deed under the Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 6, is effectual if delivery of the deed is delayed till after the time for commencement of the estate (Challis, Law of Real Property, 3rd ed., p. 107).

(*p*) *Buckler's Case* (1597), 2 Co. Rep. 55 a; *Barwick's Case*, *supra*; *Freeman* d. *Vernon* v. *West* (1763), 2 Wils. 165; 2 Bl. Com. 165; 1 Preston on Estates, 217, 219, 253; 2 *ibid.*, 126, 146; see *Hogg* v. *Cross* (1591), Cro. Eliz. 254; *Throckmerton* v. *Tracy* (1556), Plowd. 145, 156; *Swyft* v. *Eyres* (1639), Cro. Car. 546. The rule applied to all forms of conveyance of corporeal hereditaments operating at common law (see *Roe* d. *Wilkinson* v. *Tranmarr* (1758), Willes, 682), except, perhaps, common law exchanges (Perkins, Laws of England, s. 265; 1 Preston on Estates, 217, note (d); Challis, Law of Real Property, 3rd ed., p. 106), which, however, do not now occur in practice (p. 295, *post*). As to such exchanges, see Co. Litt. 51 b; title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 368, note (*v*). The rule

remainder cannot be limited so as to vest in possession at a date later than the determination of the preceding estate (*q*).

Nature of a remainder.

409. An estate in remainder must be so limited that it shall wait for the regular determination of the particular estate, and shall not take effect till that determination (*r*). For this purpose, the particular estate may expire either in accordance with a direct or a collateral limitation (*s*). In either case, the particular estate expires in accordance with its limitation, and the estate limited to follow it is a remainder (*t*). An interest limited to defeat an existing estate is an executory interest and cannot be created at common law by deed (*u*).

Comparison with executory interest.

No remainder on a fee simple.

410. Since a limitation in fee simple exhausts the possible duration of the tenure, at common law no remainder can be limited after a fee simple (*a*); and this, it seems, is so, whether the fee

applied, apparently by way of analogy (Challis, Law of Real Property, 3rd ed., p. 112), to conveyances of existing incorporeal hereditaments (1 Preston on Estates, 217); and it applies to corporeal hereditaments now that they lie in grant (see Challis, Law of Real Property, 3rd ed., pp. 109 *et seq.*); and see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 362, note (*a*). But an incorporeal hereditament, such as a rentcharge, can be limited to arise at a future time. It is the creation of the grantor, who may mould it in what form he pleases (*Throckmerton* v. *Tracy* (1556), 1 Plowd. 145, 156; *R.* v. *Kempe* (1695), 1 Ld. Raym. 52; see *Sutton's Hospital Case* (1612), 10 Co. Rep. 23 a, 27 b). It follows that desultory limitations, that is, limitations creating estates or interests to arise at intervals, and not to exist continuously, are possible on the creation of incorporeal hereditaments, but not on the grant of corporeal hereditaments or existing incorporeal hereditaments (*Corbet's Case* (1600), 1 Co. Rep. 83 b, 87 a; *The Prince's Case* (1606), 8 Co. Rep. 1 a, 13 b, 17 a; *Atkins* v. *Mountague* (1671), 1 Cas. in Ch. 214; Challis, Law of Real Property, 3rd ed., p. 113).

(*q*) Such a limitation, as much as an original limitation, infringes the rule that the freehold must not be in abeyance. The existence of a gap between the particular estate and the remainder was the usual cause of failure of contingent remainders (*Cunliffe* v. *Brancker* (1876), 3 Ch. D. 393, C. A.; *White* v. *Summers*, [1908] 2 Ch. 256, 265).

(*r*) *Colthirst* v. *Bejushin* (1551), 1 Plowd. 21, 23, 24, *arguendo*; Fearne, Contingent Remainders, pp. 10, note (b), 261; Challis, Law of Real Property, 3rd ed., p. 81.

(*s*) As to collateral limitations, see pp. 170 *et seq.*, *ante*.

(*t*) Thus an estate granted to a man, while he continues unmarried, determines on his marriage, and admits of a remainder being limited upon it (2 Bl. Com. 155; Challis, Law of Real Property, 3rd ed., p. 82).

(*u*) As to executory interests, see pp. 231 *et seq.*, *post*. At common law an estate can be made defeasible on breach of condition, but only the grantor or his heirs can take advantage of the condition (see pp. 168, 170, *ante*), and if a particular estate is limited subject to a condition, a remainder cannot be limited to take effect on the happening of the condition (*Colthirst* v. *Bejushin*, *supra*, at p. 29, *arguendo*; Fearne, Contingent Remainders, p. 262). But if the remainder is limited on the regular determination of the preceding estate, without reference to the condition, it seems that this destroys the condition. An entry by the grantor would defeat not only the particular estate, but the remainder, and he cannot thus derogate from his own grant (Fearne, Contingent Remainders, pp. 270 *et seq.*; Challis, Law of Real Property, 3rd ed., pp. 81, 82).

(*a*) "Two fee simples absolute cannot be of one and the selfsame land" (Co. Litt. 18 a; *Willion* v. *Berkley* (1562), 1 Plowd. 223, 248); and see pp. 170, 171, 213, *ante*.

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simple is absolute or determinable (*b*). The only interest that can exist after a fee simple is a possibility of reverter (*c*).

SUB-SECT. 3.—*Vested Remainders.*

Vested remainder.

411. Remainders are either vested or contingent (*d*), according as they are or are not ready for the time being to take effect in possession in the event of the determination of all the preceding estates, whether by natural expiration or otherwise. The remainder may in fact determine before the preceding estates, and thus never take effect in possession; but this does not prevent it from being vested. The present capacity of taking effect in possession, if the possession were to become vacant, and not the certainty that the possession will become vacant before the estate limited in remainder determines, universally distinguishes a vested remainder from one that is contingent (*e*).

Distinguished from contingent remainder.

Remainder on term of years.

412. A vested remainder may be limited upon a preceding term of years. The seisin is immediately in the remainderman, who holds

(*b*) *Stafford* (*Earl*) v. *Buckley* (1750), 2 Ves. Sen. 170, 180. As to modified fees, see pp. 168 *et seq.*, *ante*. It is a question whether, prior to the Statute De Donis, 1285 (13 Edw. 1, c. 1), it was the practice to limit remainders upon conditional fees, but apparently it was not; though when that statute turned such fees into estates tail—that is, into particular estates of inheritance (see p. 172, *ante*)—a remainder could be limited upon them (Co. Litt. 22 a, b; *Willion* v. *Berkley* (1562), 1 Plowd. 223, 248; *Winchester's* (*Marquis*) *Case* (1583), 3 Co. Rep. 1 a, 3 b). And it appears that remainders, if so limited on conditional fees, were limited in error, and that they have never been recognised by way of limitation after determinable fees (see Challis, Law of Real Property, 3rd ed., pp. 83—85; Appendix II., p. 428).

(*c*) See p. 213, *ante*; and see p. 237, *post*; and, as to limiting alternative fees after a particular estate, see p. 219, *post*.

(*d*) As to what words will create a contingent gift, see title WILLS.

(*e*) Fearne, Contingent Remainders, p. 216; Challis, Law of Real Property, 3rd ed., p. 74; see *Parkhurst* v. *Smith* d. *Dormer* (1742), Willes, 327, 337, H. L. By "present capacity" it must be understood that the capacity is already existing before the determination of the previous estate, and does not arise at the same instant as that determination. Thus, under a remainder to an "heir" of the tenant for life by purchase is contingent, since the heir is not ascertained till the determination of the preceding life estate, although there is an heir presumptive always ready to be heir-at-law (see Challis, Law of Real Property, 3rd ed., p. 74). It was formerly a question whether in a limitation to A. for life, followed by a remainder to B. during the life of A., the remainder was vested or contingent. This limitation was used in the estate of trustees to preserve contingent remainders in the form:—after the determination of the precedent life estate by forfeiture or otherwise during the life of the tenant for life, to the use of the trustees and their heirs during his life in trust for him and to preserve contingent remainders; but the reference to the premature destruction of the life estate was not essential. This was the only manner in which the remainder could take effect, and hence the reference was implied. The utility of the limitation depended on its being a vested estate, inasmuch as, if contingent, it was liable to be destroyed. Since the actual vesting of the estate depended on a contingency, it had the aspect of a contingent remainder. On the other hand, it was always ready to come into possession on the premature determination of the life estate, and it had the essential feature of a vested remainder. This, accordingly, it was held to be (*Smith* d. *Dormer* v. *Packhurst* (1740), 3 Atk. 135, H. L.; Fearne, Contingent Remainders, pp. 217 *et seq.*; Challis, Law of Real Property, 3rd ed., pp. 142 *et seq.*).

subject to the term (*f*); consequently the limitation does not place the freehold in abeyance (*f*). Where the limitation is for a term of years if A. so long lives and after the death of A. remainder over, the remainder is *primâ facie* contingent, because if A. survives the term it will not be ready to vest in possession on the expiration of the term (*g*); but if the term is so long that A. cannot by any reasonable probability survive it, the remainder is treated as vested (*h*). A term of eighty years is sufficient for this purpose (*i*).

Remainder expectant on contingent remainder.

413. A remainder may be vested notwithstanding that there are contingent remainders limited between it and the particular estate (*k*), provided none of the contingent remainders is a remainder in fee. Thus, on a limitation to A. for life, remainder to an unborn person in tail, remainder to C. in fee, C. has the first vested estate of inheritance; but, upon a tenant in tail coming into existence, his estate vests by interposition between the life estate, if then subsisting, and the remainder in fee (*k*). If, however, the contingent limitation is in fee simple, no estate limited after it can be vested (*l*); though different contingent remainders can be limited alternatively on the same particular estate (*m*).

Alternative remainder.

(*f*) See p. 214, *ante*; Fearne, Contingent Remainders, p. 24; *De Grey* v. *Richardson* (1747), 3 Atk. 469.

(*g*) *Boraston's Case* (1587), 3 Co. Rep. 19 a, 20 a; *Beverley* v. *Beverley* (1690), 2 Vern. 131.

(*h*) *Napper* v. *Sanders* (1632), Hut. 118; *Weale* v. *Lower* (1673), Poll. 54, 67; Fearne, Contingent Remainders, pp. 20 *et seq.*

(*i*) Fearne, Contingent Remainders, p. 21. Apparently the length of the term should depend on the age of the specified person; thus, if he were forty at the date of the conveyance, a sixty years' term should suffice. But this is not so, and the term must be at least eighty years, whatever the age of the life (see *Beverley* v. *Beverley* (1690), 2 Vern. 131). It is assumed that the remainder is vested in other respects. Thus, under a devise by A. to B. for life, remainder to C. for ninety-nine years, if he should so long live, remainder to the heirs of the body of C., the last remainder being, on C. surviving B., the next freehold to A.'s estate, and being contingent until the heirs of the body of C. were ascertained by his death, was, on C. surviving B., defeated owing to the absence of a particular estate to support it (*Doe* d. *Mussell* v. *Morgan* (1790), 3 Term Rep. 763; *Cunliffe* v. *Brancker* (1876), 3 Ch. D. 393, C. A.).

(*k*) Fearne, Contingent Remainders, p. 223. This is important in case of waste by the tenant for life (see pp. 175, 176, *ante*), since the owner of the first vested estate of inheritance is entitled to the proceeds of the waste (*Udal* v. *Udal* (1648), Aleyn, 81; *Bowles'* (*Lewis*) *Case* (1615), 11 Co. Rep. 79 b); and see title SETTLEMENTS.

(*l*) *Loddington* v. *Kyme* (1697), 1 Salk. 224; Fearne, Contingent Remainders, pp. 225, 229. Fearne suggests that a contingent determinable fee, limited to trustees for a special purpose, will not prevent a subsequent limitation to one *in esse* from being vested (Fearne, Contingent Remainders, p. 225); but this appears to be opposed to the rule that a remainder cannot be limited after a determinable fee (*ibid.*, p. 226, Butler's note (d); see p. 171, *ante*).

(*m*) *Loddington* v. *Kyme*, *supra* (devise to A. for life, and if he have issue male, then to such issue male and his heirs, and if he die without issue male, to B. and his heirs; A. had only an estate for life, and the second remainder was not after, but alternative to, the first); *Doe* d. *Davy* v. *Burnsall* (1794), 6 Term Rep. 30, 35; *Burnsall* v. *Davy* (1798), 1 Bos. & P. 215; *Doe* d. *Planner* v. *Scudamore* (1800), 2 Bos. & P. 289; *Doe* d. *Gilman* v. *Elvey* (1803), 4 East, 313; Fearne, Contingent Remainders, p. 373

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Remainder subject to power of appointment.

414. Where the estate in the land expectant on a particular estate is subject to a power of appointment, and there is a remainder limited in default of appointment, the remainder, when otherwise ready to vest, is not prevented from doing so by the existence of the power. The remainder is vested, but is liable to be divested by an exercise of the power (*n*); and this is so notwithstanding that the power extends to an appointment in fee simple (*o*).

SUB-SECT. 4.—*Contingent Remainders.*

Nature.

415. A contingent remainder is a remainder limited so as to depend on an event or condition, which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding estate (*p*).

Classification.

416. Contingent remainders are divisible into four classes (*q*):—

(1) Where the remainder depends entirely on a contingent determination of the preceding estate itself (*r*);

and see *Re White and Hindle's Contract* (1877), 7 Ch. D. 201). Of such fees, each is a remainder in regard to the particular estate, but none is a remainder in regard to any other of them (Challis, Law of Real Property, 3rd ed., p. 80).

(*n*) *Cunningham* v. *Moody* (1748), 1 Ves. Sen. 174, *per* Lord HARDWICKE, L.C., at p. 177:—"Nor does the power of appointment make any alteration therein"—that is, as to the fee not being in abeyance—"for the only effect thereof is, that the fee which was vested was thereby subject to be divested if the whole were appointed"; *Doe* d. *Willis* v. *Martin* (1790), 4 Term Rep. 39, 64; Fearne, Contingent Remainders, pp. 226 *et seq.* As to powers of appointment, see, generally, title POWERS, Vol. XXIII., pp. 1 *et seq.*

(*o*) See Fearne, Contingent Remainders, pp. 229 *et seq.*

(*p*) Fearne, Contingent Remainders, p. 3.

(*q*) Fearne, Contingent Remainders, p. 5. Fearne's classification has been generally accepted, subject to the observations in the following notes.

(*r*) Fearne, Contingent Remainders, p. 5. For instance, in a limitation to A. till a specified event which may or may not happen, and on the happening of the event to B. in fee (*Boraston's Case* (1587), 3 Co. Rep. 19 a, 20 a). A. has by implication a life estate determinable on the happening of the event, and B.'s estate is contingent on the happening of the event during A.'s life. In this kind of contingent remainder the particular estate is originally so limited that it may expire on more than one event, or at more than one time, and the remainder is to become vested only if the particular estate determines on one of the events or at one of the times; see Butler's explanation of Fearne's definition (Fearne, Contingent Remainders, p. 5, note (d)). The peculiarity is that the remainder cannot become vested during the continuance of the particular estate, because the event which vests the remainder also determines the particular estate. "The remainder can only become vested, if at all, *eo instanti* with the determination of the particular estate" (Challis, Law of Real Property, 3rd ed., p. 127). In the other classes (see notes (*s*), (*t*), (*a*), pp. 221, 222, *post*) the contingent remainder can vest during the continuance of the particular estate.

Contingent remainders of this class are similar to executory limitations (see p. 231, *post*), but the distinction is that, in a contingent remainder, though the particular estate will determine on a contingency, yet this is part of its direct limitation. The next estate waits for its determination, and is a remainder, but, by reason of the contingent nature of this mode of determination, it is a contingent remainder. But an executory limitation is so framed as not to wait for the regular determination of the preceding estate. It interrupts and destroys that estate and substitutes another estate in its place. The limitation instanced above is an example

(2) Where the contingency is independent of the determination of the preceding estate (*s*);

(3) Where the contingency is certain to happen, but may not happen till after the determination of the particular estate (*t*);

of a contingent remainder, since the contingent determination of the estate is incorporated in its original limitation. In a conveyance to A. for life, with a proviso that if a specified event happens the estate shall go to B. in fee, the interest of B. is not a remainder, but an estate arising by executory limitation, sometimes called conditional limitation; see *Egerton* v. *Brownlow* (*Earl*) (1853), 4 H. L. Cas. 1, 186. Such limitations are not valid at common law, but may be good in wills as executory devises, and in conveyances operating under the Statute of Uses as shifting uses (see pp. 231, 232, 279, *post*). Contingent remainders came to be allowed at common law, but only by relaxation of the original rule that on a grant by deed of a particular estate and remainder the remainder must immediately vest in the grantee of that estate (Littleton's Tenures, s. 721; Co. Litt. 378 a (where exceptions from the strict rule are stated); Challis, Law of Real Property, 3rd ed., p. 75, n.).

The definition of the first class of contingent remainders appears to include the limitation of estates to preserve contingent remainders (see note (*e*), p. 218, *ante*), which were formerly inserted in real settlements, and these, it is settled, are vested remainders. A modification of the definition was proposed by Challis to meet this case (Challis, Law of Real Property, 3rd ed., p. 146), but the matter has ceased to be of practical importance.

(*s*) Where, for example, the limitations are to A. for life, remainder to B. for life, and, if B. die before A., remainder to C. for life (*Boraston's Case* (1587), 3 Co. Rep. 19 a, 20 a). The remainder to C. is contingent on the death of B. before A., and this is independent of the determination of A.'s estate (Fearne, Contingent Remainders, pp. 6, 7). If B. survives A., C.'s remainder can never take effect. The remainder to C. is, in fact, substitutional if that to B. fails. A limitation of successive life estates to A.; B. and C. would give C. an immediate life estate on the death of A. after B., and a postponed life estate on the death of A. before B.; see *Denn* d. *Radclyffe* v. *Bagshaw* (1796), 6 Term Rep. 512; *Doe* d. *Gilman* v. *Elvey* (1803), 4 East, 313; *Cole* v. *Sewell* (1848), 2 H. L. Cas. 186; *Price* v. *Hall* (1868), L. R. 5 Eq. 399 (devise to A. for life, remainder to children of B. if he leaves any him surviving; the event remains contingent during the life of B.).

The determination of the life estate may itself ascertain the event on which the remainder vests, and then the remainder vests in interest and possession at the same time. Where, for instance, there is a limitation to A. for life, remainder to B. in fee if he survives A., the remainder is contingent during the joint lives of A. and B., and if A. dies first it thereupon vests in interest and possession in B. (*Doe* d. *Planner* v. *Scudamore* (1800), 2 Bos. & P. 289); so, also, in the case of a limitation to A. and B. for their joint lives as tenants in common and to the survivor for life (*Whitby* v. *Von Luedecke*, [1906] 1 Ch. 783). So, if the limitations are to A. in tail, and, if he dies without leaving issue living at his death, to B. in fee, A.'s death without leaving issue, and without having barred the estate tail, vests the remainder in interest and possession (Fearne, Contingent Remainders, p. 7. Butler's note).

(*t*) Where, for instance, the limitations are to A. for life, and after the death of B. to C. in fee: B.'s death is certain, but it may not happen till after the death of A., and hence C.'s remainder in fee is contingent. So, also, where the limitations are to A. for twenty-one years if he shall so long live, and after his death to B. in fee. The term may expire in the lifetime of A., but the remainder to B. will not then be ready to come into possession. If, however, the term is so long as to exceed A.'s probable life, the remainder is vested (see p. 219, *ante*). The defect of these remainders is, not that the contingency may never happen, but that it may happen too late,

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(4) Where the person to whom the limitation is made is not ascertained or is not in being (*a*).

Supported by preceding estate.

417. Wherever an estate of freehold is limited as a contingent remainder, some vested estate of freehold must precede it—in other words, a contingent remainder must have a vested particular freehold estate to support it (*b*). But there is no necessity for a

that is, after a period uncovered by any preceding estate of freehold (Fearne, Contingent Remainders, pp. 7, 8; Challis, Law of Real Property, 3rd ed., pp. 128 *et seq.*).

(*a*) Where, for example, the limitations are to A. for life, remainder to the right heirs of B., there can be no right heirs of B. until his death, for *nemo est hæres viventis* (Co. Litt. 378 a); and hence, until that event, the remainder is contingent (*Challoner and Bowyer's Case* (1587), 2 Leon. 70; *Boraston's Case* (1587), 3 Co. Rep. 19 a, 20 a; *Archer's Case* (1597), 1 Co. Rep. 66 b). Or where a remainder is limited to the first son of B., who at that time has no son (Fearne, Contingent Remainders, p. 9; Challis, Law of Real Property, 3rd ed., p. 132), or to several for life with remainder in fee to the heirs of the survivor, here there is a joint tenancy for lives with a contingent remainder in fee to the survivor (Co. Litt. 191 a, Butler's note (1); *Quarm* v. *Quarm*, [1892] 1 Q. B. 184; see *Re Ashforth, Sibley* v. *Ashforth*, [1905] 1 Ch. 535; note (*d*), p. 223, *post*). Limitations to unborn persons furnish in practice the most usual cases of contingent remainders. Remainders which are *primâ facie* limited to heirs of a living person, and are, therefore, contingent within this rule, may be excepted on two grounds —(1) because the ancestor takes a preceding estate of freehold, so that the words referring to his heirs are words of limitation and not of purchase under the rule in *Shelley's Case* (see p. 226, *post*); in this case the remainder is a vested remainder in the ancestor; or (2) because, on the construction of the instrument, the description of "heir" refers to a particular person (*persona designata*) existing at the date when the instrument takes effect, and not to the person who will ultimately be the heir. In these cases the remainder vests in the person so designated, notwithstanding the maxim quoted above (Fearne, Contingent Remainders, pp. 209 *et seq.*; Challis, Law of Real Property, 3rd ed., p. 132); where, for instance, there is a limitation to "the heirs male of the body of A. now living" (*Burchett* v. *Durdant* (1690), 2 Vent. 311), since "heirs" is *nomen collectivum*, this gives an estate tail (*ibid.*; S. C., *sub nom. James* v. *Richardson* (1678), 2 Lev. 232); or a limitation to heirs male of A., and the testator in his will takes notice that A. is living (*Darbison* d. *Long* v. *Beaumont* (1713), 1 P. Wms. 229; (1714), 3 Bro. Parl. Cas. 60; *Goodright* d. *Brooking* v. *White* (1775), 2 Wm. Bl. 1010). As to these last cases, which are cited by Fearne in support of the exception, see Challis, Law of Real Property, 3rd ed., pp. 132; and see *Cholmondeley* (*Marquis*) v. *Clinton* (*Lord*) (1817), 2 Mer. 171, 232; *Doe* d. *Winter* v. *Perratt* (1843), 9 Cl. & Fin. 606, 690 *et seq.*, H. L. Under a limitation to a special heir, such as heir female, by purchase, it seems that the person to take must be both actual heir—that is, heir general—and also heir special (Co. Litt. 24 b; Challis, Law of Real Property, 3rd ed., p. 132; Co. Litt. Hargrave's note (3); Fearne, Contingent Remainders, p. 213, and cases there cited).

(*b*) Hence, under a limitation to A. for years, remainder to the heirs of A. in fee, the remainder, which is contingent during A.'s life, is void as a remainder, for want of a preceding estate of freehold (*Goodright* v. *Cornish* (1694), 1 Salk. 226; see *White* v. *Summers*, [1908] 2 Ch. 256). The freehold passes out of the grantor at the time of the grant, and, if there is not an estate of freehold preceding the contingent remainder, the first vested estate of freehold in remainder becomes at once an estate in possession and the contingent remainder cannot afterwards arise (Fearne, Contingent Remainders, p. 282). But under a limitation of a term of ninety-nine years to A. if he should so long live, remainder to B. and C. (trustees to preserve contingent remainders) for the life of A., remainder to the heirs of A. in fee, B. and C.'s estate is a vested estate of freehold (see p. 219, *ante*),

preceding estate of freehold to support a contingent remainder for years (*c*).

When remainder must vest.

418. The preceding freehold estate must continue until the time when the contingent remainder vests; for, if it determines earlier, the freehold goes to the next vested remainderman, or if there is none such, to the reversioner, and, at common law, the contingent remainder can never arise. Hence it is a rule that, apart from statute, every remainder must vest either during the particular estate or else at the instant of its determination (*d*). But a posthumous child, becoming entitled under a contingent remainder after his father's life estate, is treated as being born in his father's lifetime so as to make the remainder vest in time (*e*).

and it supports the contingent remainder to the heirs of A. (see *Egerton* v. *Brownlow* (*Earl*) (1853), 4 H. L. Cas. 1). *Contra*, if the limitation is to trustees for 120 years, if A., the wife of B., so long lives, and subject thereto to B. for life, remainder to trustees for his life to preserve contingent remainders, remainder to the children of A. and B. living at the death of the survivor of A. and B.: if B. dies first, the contingent remainder to the children fails (*Cunliffe* v. *Brancker* (1876), 3 Ch. D. 393, C. A.). It is said that the preceding estate of freehold necessary to support a contingent remainder must arise under the same instrument as that which creates the contingent remainder (*Key* v. *Gamble* (1678), T. Jo. 123; *Moore* v. *Parker* (1695), 1 Ld. Raym. 37; Fearne, Contingent Remainders, p. 302). But this cannot refer to the necessity of keeping the freehold full; the feudal requirement is satisfied however the immediate estate of freehold is created. The future interest, however, unless created by the same instrument, is not strictly a remainder on the particular estate; thus it will not coalesce with it under the rule (see p. 226, *post*) in *Shelley's Case* (*Snowe* v. *Cuttler* (1664), 1 Lev. 135; *Moore* v. *Parker, supra*; *Doe* d. *Fonnereau* v. *Fonnereau* (1780), 2 Doug. (K. B.) 487, 508; see p. 229, *post*), and, not being a remainder, it can take effect as an executory interest, if created by devise or under the Statute of Uses (27 Hen. 8, c. 10); see *ibid.*; Challis, Law of Real Property, 3rd ed., p. 120; and see *Weale* v. *Lower* (1673), Poll. 54, 66 (6th point), where the postponement of the estate to the death of the survivor of the tenant for life and another was held not to import a contingency, but only to direct the time of possession. It seems that, in a conveyance under the Statute of Uses (27 Hen. 8, c. 10) an estate of freehold resulting to the grantor by way of resulting use arises under the same instrument, and will support subsequent contingent remainders. The principle is the same as where a resulting life estate joins with a remainder to the grantor in fee simple or fee tail to give an estate in fee or in tail (see *Hopkins* (*alias Dare*) v. *Hopkins* (1738), 1 Atk. 581, 596; p. 228, *post*); but such an estate will not result to the grantor where an inconsistent estate, such as a term of years, is expressly limited to him (Fearne, Contingent Remainders, p. 49; see pp. 278, 279, *post*).

(*c*) Fearne, Contingent Remainders, p. 285.

(*d*) Fearne, Contingent Remainders, pp. 307, 310. If follows that when the particular estate is limited to tenants in common the contingent remainder may (apart from statute) fail as to part, if not vested on the determination of the particular estate as to that part, but be good as to the rest, if vested on the determination of the particular estate in the remainder (Fearne, Contingent Remainders, p. 310). A devise to A. and B. "to be equally divided between them" during their lives, and after their decease to the heirs of A., though *primâ facie* a tenancy in common for lives, has been held to be a joint tenancy in order to save the contingent remainder (*Tuckerman* v. *Jefferies* (1707), 11 Mod. Rep. 108). As to joint tenancy, see pp. 199 *et seq.*, *ante*.

(*e*) *Reeve* v. *Long* (1694), 1 Salk. 227, as to wills; extended to deeds by stat. (1698) 10 Will. 3, c. 22; see Co. Litt. 298 a, Butler's note (3).

SECT. 7. Remainders and Reversions.

Destruction of contingent remainders.

419. Consequently, until recent statutory changes, contingent remainders in freeholds (*f*) were liable to be destroyed, not only by their being still contingent at the time of the natural expiration of the preceding freehold estate in possession (*g*), but also by the premature determination of such estate (*h*); which might take place by forfeiture, surrender, or merger, and in other ways now obsolete (*i*). But this liability to destruction did not exist where

(*f*) Contingent remainders in copyholds were protected by the estate of the lord; see title COPYHOLDS, Vol. VIII., p. 77.

(*g*) Where, for instance, the limitations are to A. for life, remainder to the heir of B., and A. dies before B. (Co. Litt. 378 a; *Doe* d. *Mussell* v. *Morgan* (1790), 3 Term Rep. 763; compare *Fuller* v. *Chamier* (1866), L. R. 2 Eq. 682); or to A. for life, remainder to the children of B., if he leaves children surviving him, and A. dies in the lifetime of B. (*Price* v. *Hall* (1868), L. R. 5 Eq. 399); or to A. for life, remainder to the first son of B. who attains twenty-one in fee, and A. dies before a son of B. has attained twenty-one (*White* v. *Summers*, [1908] 2 Ch. 256).

(*h*) *Chudleigh's Case* (1595), 1 Co. Rep. 120 a; *Archer's Case* (1597), 1 Co. Rep. 66 b; *Egerton* v. *Massey* (1857), 3 C. B. (N. S.) 338 (merger). In settlements this liability to destruction was avoided by the insertion of limitations to trustees to preserve contingent remainders (Fearne, Contingent Remainders, pp. 325 *et seq.*; 2 Bl. Com. 171; Challis, Law of Real Property, 3rd ed., pp. 142 *et seq.*).

(*i*) Fearne, Contingent Remainders, pp. 316 *et seq.*; and, as to these modes of determining an estate, see pp. 330 *et seq.*, *post*. When feoffments had a tortious operation, a feoffment in fee by a tenant for life was a forfeiture of his estate and destroyed any contingent remainders (*Chudleigh's Case*, *supra*; and see *ibid.*, at p. 135 b; *Archer's Case*, *supra*; see note (*p*), p. 177, *ante*). For this purpose an entry by the first vested remainderman was not required. But the tortious effect of alienations has been abolished (see p. 291, *post*). A forfeiture by the tenant for life in other ways did not *ipso facto* determine his estate, and this remained in existence and supported contingent remainders until entry by the next vested remainderman (Fearne, Contingent Remainders, p. 323). Formerly, also, a disseisin of the freeholder might destroy the contingent remainders. For this purpose it was not enough that the particular estate was turned to a right of entry; but, on the death of the disseisor and descent of his right to his heir, the right of entry of the disseisee was turned to a right of action (Co. Litt. 237 a, b; and see title ACTION, Vol. I., p. 33), and the contingent remainders were then destroyed; though the right of entry might still be kept alive, notwithstanding descent cast (see title LIMITATION OF ACTIONS, Vol. XIX., p. 105, note (*d*)), and the remainders preserved, by continual claim (Littleton's Tenures, s. 422); and it was also kept alive, by stat. (1540) 32 Hen. 8, c. 33, until the disseisor had had five years' peaceable possession; see Fearne, Contingent Remainders, pp. 286 *et seq.*, and Butler's note (e). A right of entry is not now liable to be turned to a right of action (Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 39: see title LIMITATION OF ACTIONS, Vol. XIX., pp. 104. 105), but continues until the owner's title is extinguished by the statute (see *ibid.*, pp. 105, 155), and such extinction does not destroy contingent remainders. These have the usual period of limitation allowed for future estates; see title LIMITATION OF ACTIONS, Vol. XIX., pp. 116 *et seq.*

This liability of contingent remainders to destruction by failure of the preceding freehold estate in possession existed whether the limitation took effect at common law or under the Statute of Uses (27 Hen. 8, c. 10) (*Chudleigh's Case*, *supra*; Fearne, Contingent Remainders, p. 324); but there was the distinction that, in limitations to uses, if the *cestui que use* in possession was disseised and his estate turned to a right of entry, an entry either by him or the feoffees to uses was required in order to restore to the feoffees that possibility of seisin which was necessary to serve the contingent uses when they were ready to vest (*Chudleigh's Case*, *supra*;

the contingent remainders were equitable, whether by reason of the legal estate in fee being vested in trustees by the settlement itself (*j*), or by reason of the legal estate being outstanding (*k*).

Remainders in favour of a class.

420. Where contingent remainders are limited in favour of a class the members of which become capable of taking at different times, the entirety vests in those who first become capable, and as others become capable during the continuance of the particular estate, the remainder is divested to the extent necessary to let in the later members (*l*). But, apart from statute, those who do not become capable during such continuance are excluded (*m*).

Statutory safeguards of contingent remainders.

421. It is now provided by statute (*n*) that a contingent remainder existing at any time after the 31st December, 1844, shall be, and, if created before the 4th August, 1845 (*o*), shall be deemed to have been, capable of taking effect, notwithstanding the determination, by forfeiture, surrender or merger, of any preceding estate of freehold, in the same manner, in all respects, as if such determination had not happened; and to ensure against the failure of contingent remainders by the natural expiration of the particular estate it is further provided (*p*) that every contingent remainder

Fearne, Contingent Remainders, p. 290; and see Butler's note (h) explaining *Chudleigh's Case* (1595), 1 Co. Rep. 120 a, and the various theories as to the relation of the feoffee's seisin to future estates); and see, further, p. 282, *post*.

(*j*) The legal estate in the trustees prevents the freehold from being in abeyance, and the equitable contingent remainder requires no preceding equitable estate to support it (Fearne, Contingent Remainders, p. 304; *Berry* v. *Berry* (1878), 7 Ch. D. 657; *Re Finch, Abbiss* v. *Burney* (1881), 17 Ch. D. 211, 229, C. A.; *Marshall* v. *Gingell* (1882), 21 Ch. D. 790; *Re Brooke, Brooke* v. *Brooke*, [1894] 1 Ch. 43). Similarly a conveyance in fee by an equitable tenant for life had no tortious operation (see note (*i*), p. 224, *ante*), and did not affect the equitable contingent remainders (Fearne, Contingent Remainders, p. 321). But where the limitations were, on the ordinary rules of construction, legal, the court did not depart from them in order to make the limitations equitable and so preserve the contingent remainders (*Cunliffe* v. *Brancker* (1876), 3 Ch. D. 393, C. A.). Equitable estates did not, apparently, become liable to destruction by being clothed with the legal estate (*Re Freme, Freme* v. *Logan*, [1891] 3 Ch. 167).

(*k*) Where, for instance, the legal estate is outstanding in a mortgagee (*Astley* v. *Micklethwait* (1880), 15 Ch. D. 59; see Fearne, Contingent Remainders, Butler's notes, at pp. 305, note (m), 321 note (e)).

(*l*) *Matthews* v. *Temple* (1699), Comb. 467; *Oates* d. *Hatterley* v. *Jackson* (1742), 2 Stra. 1172; *Doe* d. *Comberbach* v. *Perryn* (1789), 3 Term Rep. 484.

(*m*) *Festing* v. *Allen* (1843), 12 M. & W. 279; *Rhodes* v. *Whitehead* (1865), 2 Drew. & Sm. 532; *Brackenbury* v. *Gibbons* (1876), 2 Ch. D. 417; see *Holmes* v. *Prescott* (1864), 10 Jur. (N. S.) 507; and, as to when such interests can be construed as executory, see p. 234, *post*.

(*n*) Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 8.

(*o*) The date of commencement of the stat. (1844) 7 & 8 Vict. c. 76. *Ibid.*, s. 8, provided against the failure of existing contingent remainders by the premature determination of the particular estate, and, in order to preserve them if not ready to vest on the regular determination of that estate, purported to turn future contingent remainders into executory interests. The provision was repealed by the Real Property Act, 1845 (8 & 9 Vict. c. 106), which substituted the provision stated in the text, *supra*, as regards premature determination; failure by the regular determination of the estate was not again provided against till the statute next mentioned; see note (*p*), *infra*. The abolition of contingent remainders has not been again attempted.

(*p*) Contingent Remainders Act, 1877 (40 & 41 Vict. c. 33).

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created by any instrument executed after the 2nd August, 1877, or by any will or codicil revived or republished by any will or codicil executed after that date, in tenements or hereditaments of any tenure, which would have been valid as a springing or shifting use or executory devise or other limitation, had it not had a sufficient estate to support it as a contingent remainder, shall, in the event of the particular estate determining before the contingent remainder vests, be capable of taking effect as a springing or shifting use or executory devise or other executory limitation (*q*).

Effect of protection.

Thus, contingent remainders arising under deeds or wills executed after the 2nd August, 1877 (*r*), are not liable to be defeated by the determination of the particular estate before they vest; and it is immaterial in what way the particular estate determines (*s*). But so long as there is a possibility of the contingent remainders taking effect, vested remainders are not accelerated by the determination of the particular estate, and the intermediate income passes, under a will, by the residuary devise, or, if undisposed of, to the heir-at-law (*s*).

Rule in *Shelley's Case.*

422. In general, the particular estate and the remainders limited after it are separate estates, and the person or persons defined by the limitations as the owners of each estate take it directly by virtue of the respective limitations. They are then said to take by purchase, as distinguished from taking by descent (*t*). But when the persons to take a remainder are described as the "heirs" or "heirs of the body" of a person who takes a previous estate, this principle is departed from, and the words are construed as words of limitation. The remainder does not go directly to the heirs, but is treated as a continuation of the estate previously limited to the ancestor; and this is the case whether the remainder to the heirs immediately follows the ancestor's estate or not.

Example of cases affected by the rule.

Thus, if an estate for life limited to the ancestor is followed immediately by a remainder in favour of his heirs, the two estates coalesce, and the ancestor has no longer an estate for life, but an estate of inheritance in possession, either in fee simple or in fee tail according to the description of his heirs: in this case the estate in fee simple or in tail is said to be executed in him. If another remainder is interposed between the life estate and the remainder to the heirs of the life tenant, and such remainder is vested, the two estates do not coalesce, but the ancestor has two separate estates—his life estate in possession, and his estate of inheritance in remainder (*u*). If the interposed remainder is contingent the estate of inheritance is executed *sub modo*. The life

(*q*) As to executory limitations, see pp. 231, 278, *post.*

(*r*) An equitable contingent remainder created before the 2nd August, 1877, which becomes clothed with the legal estate after that date, does not thereby become liable to be defeated by failure of the prior particular estate (*Re Freme, Freme* v. *Logan*, [1891] 3 Ch. 167).

(*s*) Thus the statute extends to determination by disclaimer (*Re Scott, Scott* v. *Scott*, [1911] 2 Ch. 374).

(*t*) See Littleton's Tenures, s. 12; and see note (*c*), p. 244, *post.*

(*u*) See Fearne, Contingent Remainders, p. 33; *Coulson* v. *Coulson* (1740), 2 Stra. 1125, note (1); compare *Van Grutten* v. *Foxwell, Foxwell* v. *Van Grutten*, [1897] A. C. 658, *per* Lord MACNAGHTEN, at p. 677.

estate and the remainder coalesce for the time, but they open out and let in the contingent remainder so soon as it vests (*a*).

Statement of rule.

The rule just stated is known as the rule in *Shelley's Case* (*b*), and is shortly expressed as follows:—Where, under a conveyance or devise, the ancestor takes an estate of freehold, and in the same instrument an estate is limited by way of remainder, either mediately or immediately, to his heirs or to his heirs in tail, the word "heirs" is a word of limitation and not of purchase, and the ancestor takes a fee simple or in tail, as the case may be (*c*).

Estates to which rule applies.

The rule applies not only to freehold estates at common law, but also to estates arising under the Statute of Uses (*d*), to equitable estates (*e*), to limitations of copyholds (*f*), and to estates *pur autre vie* (*g*).

(*a*) Fearne, Contingent Remainders, p. 37; *Bowles'* (*Lewis*) *Case* (1615), 11 Co. Rep. 79 b, 80 a.

(*b*) *Shelley's Case* (1581), 1 Co. Rep. 93 b. For a statement of the case and the points decided in it, see Challis, Law of Real Property, 3rd ed., pp. 154 *et seq.*; Tudor, L. C. Real Prop. 4th ed., pp. 332 *et seq.*

(*c*) See *Shelley's Case*, *supra*, at p. 104 a, *arguendo*; *Perrin* v. *Blake* (1770), 4 Burr. 2579; *Jones* v. *Morgan* (1783), 1 Bro. C. C. 206, 219; *Doe* d. *Davy* v. *Burnsall* (1794), 6 Term Rep. 30, 31; *Doe* d. *Lindsey* (*Earl*) v. *Colyear* (1809), 11 East, 548, 564; *Roe* d. *Thong* v. *Bedford* (1815), 4 M. & S. 362, 365; *Van Grutten* v. *Foxwell*, *Foxwell* v. *Van Grutten*, [1897] A. C. 658; Fearne, Contingent Remainders, 30; 1 Preston on Estates, 263—265. As to the history and purpose of the rule, see *Van Grutten* v. *Foxwell*, *Foxwell* v. *Van Grutten*, *supra*, *per* Lord MACNAGHTEN, at p. 668. It has been variously referred to the desire to protect the lord in the enjoyment of the fruits of feudal tenure (Fearne, Contingent Remainders, p. 83; 1 Preston on Estates, 2nd ed., p. 295), and to the desire to facilitate alienation (*Perrin* v. *Blake*, *supra*; see judgment of BLACKSTONE, J., in Hargrave's Law Tracts, Vol. I., pp. 489 *et seq.*; *Wright* v. *Vernon* (1854), 2 Drew. 439, 456; *Re Parry and Daggs* (1885), 31 Ch. D. 130, 134, C. A.; *Evans* v. *Evans*, [1892] 2 Ch. 173, 186, C. A.).

(*d*) See pp. 271 *et seq.*, *post*.

(*e*) *Baile* v. *Coleman* (1711), 2 Vern. 670; *Papillon* v. *Voice* (1728), 2 P. Wms. 471, 477; *Reynell* v. *Reynell* (1846), 10 Beav. 21; *Cooper* v. *Kynock* (1872), 7 Ch. App. 398; *Re White and Hindle's Contract* (1877), 7 Ch. D. 201; *Richardson* v. *Harrison* (1885), 16 Q. B. D. 85, 104, C. A.; *Re Youman's Will*, [1901] 1 Ch. 720. Where the equitable limitations take effect by way of executed trust, the rule applies in the same manner as where the limitations are legal (*Jones* v. *Morgan*, *supra*, at p. 223); and see title EQUITY, Vol. XIII., p. 95, note (*c*). As to when trustees take the entire fee, so as to make all the beneficial limitations equitable, see *Cooper* v. *Kynock*, *supra*; *Collier* v. *Walters* (1873), L. R. 17 Eq. 252, 260; title TRUSTS AND TRUSTEES. But where the trust is executory, as in a will containing a direction to settle, the rule does not necessarily apply, and, in a conveyance made in pursuance of the trust, an estate for life, followed by estates tail, can be limited as in a strict settlement, if such appears to have been the intention (*Leonard* v. *Sussex* (*Earl*) (1705), 2 Vern. 526; *Glenorchy* (*Lord*) v. *Bosville* (1733), Cas. *temp.* Talb. 3; see *Jervoise* v. *Northumberland* (*Duke*) (1820), 1 Jac. & W. 559; compare *Blackburn* v. *Stables* (1814), 2 Ves. & B. 367 (where a devise directing an entail "on the heirs male" of A. was construed strictly according to its legal meaning to give A. an estate tail); Fearnes Contingent Remainders, pp. 114 *et seq.*); and trusts of marriage articles are executory for this purpose (*Streatfield* v. *Streatfield* (1736), Cas. *temp.* Talb. 176; *Highway* v. *Banner* (1785), 1 Bro. C. C. 584; *Howel* v. *Howel* (1751), 2 Ves. Sen. 358; Fearne, Contingent Remainders, pp. 90 *et seq.*, 107).

(*f*) *Busby* v. *Greenslate* (1721), 1 Stra. 445; see title COPYHOLDS, Vol. VIII., p. 68, note (*w*); Fearne, Contingent Remainders, p. 60.

(*g*) *Low* v. *Burron* (1734), 3 P. Wms. 262; *Forster* v. *Forster* (1742), 2 Atk. 259; and as to estates *pur autre vie*, see pp. 178 *et seq.*, *ante*.

SECT. 7. Remainders and Reversions.

When applicable.

423. In the application of the rule, the following points require to be noticed:—

(1) The estate limited to the ancestor must be an estate of freehold (*h*), but the estate need not be expressly limited, it may arise by implication (*i*);

(2) The estate limited to the ancestor may be determinable in his lifetime; although, in accordance with the maxim, *nemo est hæres viventis*, he can have no heir existing on such determination, nevertheless the rule applies (*k*);

(3) The remainder may be in favour of the heirs general of the ancestor, or of the heirs of his body or any special class of such heirs, and he will, according to the limitation, take an estate in fee simple, an estate in fee tail, or an estate in special tail (*l*);

(4) The rule is not excluded by the limitation of the remainder to the heirs or heirs of the body of the ancestor having further words of limitation added to it (*m*), provided that the course of descent under the additional words is not inconsistent with that defined by the previous words (*n*);

(*h*) *Shelley's Case* (1581), 1 Co. Rep. 93 b, 104 a; Co. Litt. 319 b, 376 b; 1 Preston on Estates, 266, 309. Thus it does not apply where only a term of years is vested in the ancestor (*Tipping* v. *Piggot* (1713), 1 Eq. Cas. Abr. 385 (2); cited 1 P. Wms. 358; *Harris* v. *Barnes* (1768), 4 Burr. 2157); nor to personal property; see title PERSONAL PROPERTY, Vol. XXII., p. 414, note (*l*).

(*i*) Where, *e.g.*, the conveyance is by way of use, and the use is undisposed of during the life of the settlor (*Pybus* v. *Mitford* (1674), 1 Vent. 372), including the case where the use thus resulting is itself an intermediate remainder (*Wills* v. *Palmer* (1770), 5 Burr. 2615; see *Coape* v. *Arnold*, *Arnold* v. *Coape* (1855), 4 De G. M. & G. 574, 589); or where the estate for life to the ancestor is implied on the construction of a will (*Hayes* d. *Foorde* v. *Foorde* (1760), 2 Wm. Bl. 698; see Fearne, Contingent Remainders, pp. 41 *et seq.*).

(*k*) *Merrel* v. *Rumsey* (1665), T. Raym. 126; *Curtis* v. *Price* (1805), 12 Ves. 89, 99; Fearne, Contingent Remainders, pp. 30 *et seq.*

(*l*) See *Shelley's Case*, *supra* (where the limitation was to the heirs male of the body of the settlor).

(*m*) See *Shelley's Case*, *supra* (where the limitation was to the heirs male of the body of the settlor and to the heirs male of the body of such heirs male); *Legate* v. *Sewell* (1706), 1 P. Wms. 87; *Fetherston* v. *Fetherston* (1835), 3 Cl. & Fin. 67, H. L.

(*n*) See Fearne, Contingent Remainders, p. 183, and the case put by Anderson in argument in *Shelley's Case*, *supra*, at p. 95 b. The rule is only excluded in cases where the additional words describe an estate descendible in a different course, and to different persons as special heirs, from the course indicated by the first words; *e.g.*, in a limitation to A. for life, remainder to his heirs and the heirs male of their bodies (see *Doe* d. *Bosnall* v. *Harvey* (1825), 4 B. & C. 610), or to A. for life with an ultimate remainder to her heirs "as if she had died sole and unmarried" (*Brookman* v. *Smith* (1871), L. R. 6 Exch. 291, 305; affirmed, on different grounds (1872), L. R. 7 Exch. 271, Ex. Ch.; *Re Hall*, *Hall* v. *Hall*, [1893] W. N. 24, C. A.). The rule applies where the first words give an estate tail general, and the words engrafted thereon are words serving to limit the fee (Fearne, Contingent Remainders, p. 183; see *Denn* d. *Webb* v. *Puckey* (1793), 5 Term Rep. 299, *per* BULLER, J., at p. 306; *Goodright* d. *Lisle* v. *Pullin* (1726), 2 Str. 729; *Wright* v. *Pearson* (1758), 1 Eden, 119; *Kinch* v. *Ward* (1825), 2 Sim. & St. 409; see also *Denn* d. *Geering* v. *Shenton*, (1776) 1 Cowp. 410; *Alpass* v. *Watkins* (1800), 8 Term Rep. 516; *Measure* v. *Gee* (1822), 5 B. & Ald. 910; *Nash* v. *Coates* (1 32), 3 B. & Ad. 839 (where there was a gift over in default of issue, but this does not seem to be essential to create the estate tail in

(5) The estate of the ancestor and the estate to his heirs must be either both legal or both equitable (*o*);

(6) The rule does not apply where the remainder arises under an executory limitation (*p*); but it applies to contingent remainders, subject to the qualification that, so long as the remainder is contingent, the ancestor has the particular estate and the remainder as separate estates, and the contingent remainder does not coalesce with the particular estate until it vests (*q*);

(7) The estate of the ancestor and the remainder to his heirs must both arise under the same instrument (*r*); an estate subsequently limited by virtue of a power contained in the instrument limiting the ancestor's estate is for this purpose treated as arising under the same instrument as that estate (*s*);

(8) The meaning of the limitations contained in the instrument has to be ascertained according to the ordinary canons of construction (*t*); but, when it has been so ascertained, the rule in

the original donee)). Similarly a limitation "to the heirs male of his body in strict settlement" gives to the ancestor an estate tail (*Douglas* v. *Congreve* (1837), 4 Bing. (N. C.) 1; (1838), 1 Beav. 59).

(*o*) *Tipping* v. *Cozens* (1695), 1 Ld. Raym. 33; *Jones* v. *Say and Seal* (*Lord*) (1728), 1 Eq. Cas. Abr. 383 (4); *Venables* v. *Morris* (1797), 7 Term Rep. 342; *Ireson* v. *Pearman* (1825), 3 B. & C. 799; *Adams* v. *Adams* (1845), 6 Q. B. 860; *Collier* v. *McBean* (1865), 1 Ch. App. 81; *Richardson* v. *Harrison* (1885), 16 Q. B. D. 85, 104, C. A.; Fearne, Contingent Remainders, pp. 52, 58.

(*p*) See Fearne, Contingent Remainders, p. 276, commenting on *Loyd* v. *Carew* (1697), Prec. Ch. 72; *Coape* v. *Arnold, Arnold* v. *Coape* (1855), 4 De G. M. & G. 574, 589, doubted in *Re White and Hindle's Contract* (1877), 7 Ch. D. 201, 203.

(*q*) Co. Litt. 378 b; 1 Preston on Estates, 316; Fearne, Contingent Remainders, p. 33; see *Curtis* v. *Price* (1805), 12 Ves. 89; and the rule is not excluded where the limitation to heirs male is restricted to such as attain twenty-one, their heirs and assigns (*Toller* v. *Attwood* (1850), 15 Q. B. 929); or to first heirs male (*Minshull* v. *Minshull* (1738), 1 Atk. 411).

(*r*) Fearne, Contingent Remainders, p. 71; *Moore* v. *Parker* (1695), 1 Ld. Raym. 37; *Doe* d. *Fonnereau* v. *Fonnereau* (1780), 2 Doug. (K. B.) 487; *Coape* v. *Arnold, Arnold* v. *Coape, supra.* A will and codicil are the same instrument for this purpose (*Haynes* d. *Foorde* v. *Foorde* (1760), 2 Wm. Bl. 698). Unless the estates arise under the same instrument, the ultimate estate to the heirs is not a remainder on the ancestor's estate; see p. 212, *ante.*

(*s*) Fearne, Contingent Remainders, p. 74; *Venables* v. *Morris* (1797), 7 Term Rep. 342, 348. But this point was treated as doubtful before Fearne wrote (Co. Litt. 299 b, Butler's note), and was questioned afterwards (1 Preston on Estates, 310, 324).

(*t*) Thus, in a deed, the limitation must be in words proper to give an estate tail (see p. 243, *post*), or in fee simple, as the case may be, but where the limitations are contained in a will the same strictness is not observed. Thus the word "heir" attracts the rule (*Blackburn* v. *Stables* (1814), 2 Ves. & B. 367; *Fuller* v. *Chamier* (1866), L. R. 2 Eq. 682), provided it is not followed by words of limitation. These make it a word of purchase (*Archer's Case* (1597), 1 Co. Rep. 66 b; *Willis* v. *Hiscox* (1839), 4 My. & Cr. 197; *Greaves* v. *Simpson* (1864), 10 Jur. (N. S.) 609; *Evans* v. *Evans*, [1892] 2 Ch. 173, C. A.); and, in a will, the words "heir" or "heirs," or "in fee tail," are not essential. "Any expression which imports the whole succession of inheritable blood has the same effect in bringing the rule into operation as the word 'heirs'" (*Van Grutten* v. *Foxwell, Foxwell* v. *Van Grutten*, [1897] A. C. 658, *per* Lord MACNAGHTEN,

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Shelley's Case applies to them as a rule of law and not as a rule of construction (*u*), and is not excluded by indications of intention that the first estate should not extend beyond its primary limitation (*a*), nor even by an express declaration that the ancestor shall hold

at p. 668). The word "son" or "issue" may be construed as a word of limitation or a *nomen collectivum*, in order to give effect to the limitations intended by the testator (*Mellish* v. *Mellish* (1824), 2 B. & C. 520 (son); *Re Buckton, Buckton* v. *Buckton*, [1907] 2 Ch. 406 ("sons and their sons in succession"); *Roddy* v. *Fitzgerald* (1858), 6 H. L. Cas. 823, 872 (issue); *Pelham Clinton* v. *Newcastle (Duke)*, [1903] A. C. 111 (issue male and their male descendants)). On the other hand, the context may show that the words "heirs of the body" are not used as words of inheritance, but to denote sons or children as *personæ designatæ*, in which case the rule is excluded, and they take by purchase (*Goodtitle* d. *Sweet* v. *Herring* (1801), 1 East, 264; *North* v. *Martin* (1833), 6 Sim. 266; *Gummoe* v. *Howes* (1857), 23 Beav. 184; see *Fetherston* v. *Fetherston* (1835), 3 Cl. & Fin. 67, H. L.; *Poole* v. *Poole* (1804), 3 Bos. & P. 620, 628; *Green* v. *Green* (1849), 3 De G. & Sm. 480; *East* v. *Twyford* (1853), 4 H. L. Cas. 517). The question, so far as it depends on construction, is whether the expression requiring exposition, be it "heirs," or "heirs of the body," or any other expression which may have the like meaning, is used as the designation of a particular individual or a particular class of objects, or whether, on the other hand, it includes the whole line of succession capable of inheriting (*Van Grutten* v. *Foxwell*, *Foxwell* v. *Van Grutten*, [1897] A. C. 658, *per* Lord MACNAGHTEN, at p. 677). If the first words of a devise give an estate tail, when construed in accordance with the rule, this will not be cut down to an estate for life by subsequent words unless such subsequent words are equally clear (*Jack* d. *Fetherston* v. *Fetherston* (1835), 9 Bli. (N. S.) 237, H. L.; S. C., *sub nom. Fetherston* v. *Fetherston* (1835), 3 Cl. & Fin. 67, H. L.).

(*u*) *Van Grutten* v. *Foxwell*, *Foxwell* v. *Van Grutten*, *supra*, at pp. 662, 672. The rule is not, however, a mere technical rule (*Bowen* v. *Lewis* (1884), 9 App. Cas. 890, *per* Lord CAIRNS, at p. 907).

(*a*) *Jesson* v. *Doe* d. *Wright* (1820), 2 Bli. 1, H. L.; *Robinson* v. *Robinson* (1751), 2 Ves. Sen. 225, 232; *Roe* d. *Thong* v. *Bedford* (1815), 4 M. & S. 362; *Roddy* v. *Fitzgerald*, *supra*; *Van Grutten* v. *Foxwell*, *Foxwell* v. *Van Grutten* *supra*, at p. 672. Thus, the rule is not excluded by the circumstance that limitations to trustees to preserve contingent remainders are interposed (*Papillon* v. *Voice* (1728), 2 P. Wms. 471; *Sayer* v. *Masterman* (1756), Amb. 344; *Coulson* v. *Coulson* (1740), 2 Str. 1125; *Hodgson* v. *Ambrose* (1780), 1 Doug. (K. B.) 337; *Measure* v. *Gee* (1822), 5 B. & Ald. 910), nor is it excluded where the first limitation is to a tenant for life without impeachment of waste (*Papillon* v. *Voice*, *supra*; *Jones* v. *Morgan* (1783), 1 Bro. C. C. 206; *Denn* d. *Webb* v. *Puckey* (1793), 5 Term Rep. 299, 303; *Frank* v. *Stovin* (1803), 3 East, 548; *Bennet* v. *Tankerville (Earl)* (1811), 19 Ves. 170), nor where he has a power of jointuring or leasing (*Jones* v. *Morgan*, *supra*; *Frank* v. *Stovin*, *supra*; *King* v. *Melling* (1672), 1 Vent. 225; *Broughton* v. *Langley* (1703), 2 Ld. Raym. 873), or, apparently, where the interest of a married woman is given for her separate use (see *Jones* v. *Say and Seal (Lord)* (1728), 1 Eq. Cas. Abr. 383 (4); *Roberts* v. *Dixwell* (1738), 1 Atk. 607 (in which cases the married woman was, on other grounds than the separate use, held to be tenant for life only); *Douglas* v. *Congreve* (1838), 1 Beav. 59), nor where the limitation to heirs of the body purports to give them the land as tenants in common (*Doe* d. *Candler* v. *Smith* (1798), 7 Term Rep. 531; *Pierson* v. *Vickers* (1804), 5 East, 548 (whether sons or daughters); *Bennett* v. *Tankerville (Earl)* (1811), 19 Ves. 170; *Jesson* v. *Doe* d. *Wright*, *supra*; *Doe* d. *Bosnall* v. *Harvey* (1825), 4 B. & C. 610). *Doe* d. *Strong* v. *Goff* (1809), 11 East, 668, *contra*, is overruled; see *Roddy* v. *Fitzgerald*, *supra*, at p. 881; *Van Grutten* v. *Foxwell*, *Foxwell* v. *Van Grutten*, *supra*, at p. 674; compare *Montgomery* v. *Montgomery* (1845),

for life only (*b*), or shall not have power to bar the entail (*c*), or shall not dispose of the estate for longer than his own life (*d*), or that the heir shall take by purchase (*e*), or that the heirs shall have only a life estate (*f*).

SUB-SECT. 5.—*Executory Interests.*

Executory limitations, how created.

424. At common law, future interests can only be created *inter vivos* as remainders or reversions, and they must comply with the rules already stated (*g*). But future interests, known as executory interests, which do not comply with the rules, can be created by limitations operating under the Statute of Uses (*h*), and by devise. When created under the Statute of Uses (*h*) they are either springing

3 Jo. & Lat. 47, considered in *Van Grutten* v. *Foxwell*, *Foxwell* v. *Van Grutten* [1897] A. C. 658. So words of distribution and limitation added to "heirs" or "heir of the body" do not exclude the rule (*Anderson* v. *Anderson* (1861), 30 Beav. 209; *Mills* v. *Seward* (1861), 1 John. & H. 733; *Grimson* v. *Downing* (1857), 4 Drew. 125; *Van Grutten* v. *Foxwell*, *Foxwell* v. *Van Grutton*, *supra*). In devises where the limitation is to "issue," which is a word of flexible meaning (*Morgan* v. *Thomas* (1882), 9 Q. B. D. 643, C. A., *per* JESSEL, M.R., at p. 645), the mere addition of words of distribution does not by itself prevent the application of the rule (*Doe* d. *Blandford* v. *Applin* (1790), 4 Term Rep. 82; *Doe* d. *Cock* v. *Cooper* (1801), 1 East, 229; *Roddy* v. *Fitzgerald* (1858), 6 H. L. Cas. 823, 872; *Woodhouse* v. *Herrick* (1855), 1 K. & J. 352; *Harrison* v. *Harrison* (1844), 7 Man. & G. 938; *Kavanagh* v. *Morland* (1853), Kay, 16, 27); nor does the addition of words of limitation in fee or in tail exclude the rule unless the course of descent is thereby altered (*Roe* d. *Dodson* v. *Grew* (1767), 2 Wils. 322; *Denn* d. *Webb* v. *Puckey* (1793), 5 Term Rep. 299; *Frank* v. *Stovin* (1803), 3 East, 548; *Griffiths* v. *Evan* (1842), 5 Beav. 241; and see note (*n*), *supra*); and, for the application of the rule, a gift over in default of issue is not essential (*Fetherston* v. *Fetherston* (1835), 3 Cl. & Fin. 67, H. L.; *Williams* v. *Williams* (1884), 51 L. T. 779; and see note (*n*), *supra*). In *Morgan* v. *Thomas*, *supra*, the gift over showed that the word "issue" meant "children" and was not a word of limitation; see *Ryan* v. *Cowley* (1835), L. & G. *temp.* Sugd. 7, 10; and compare *Doe* d. *Cooper* v. *Collis* (1791), 4 Term Rep. 294. Words of limitation and of distribution added to the word "issue" exclude the rule (*Lees* v. *Mosley* (1836), 1 Y. & C. (EX.) 589; *Crozier* v. *Crozier* (1843), 3 Dr. & War. 373; *Greenwood* v. *Rothwell* (1843), 5 Man. & G. 628; *Slater* v. *Dangerfield* (1846), 15 M. & W. 263), whether the gift to issue is express, or is raised by implication from a power to appoint to them (*Bradley* v. *Cartwright* (1867), L. R. 2 C. P. 511). In *King* v. *Burchell* (1759), Amb. 379, the word "issue" was treated as a word of limitation, but a restriction on alienation aided the construction; while in *Tate* v. *Clarke* (1838), 1 Beav. 100, the words of distribution were apparently referred to the parents and not the issue.

(*b*) *Robinson* v. *Robinson* (1751), 2 Ves. Sen, 225, *sub nom. Robinson* v. *Hicks* (1758), 3 Bro. Parl. Cas. 180; *Re Keane's* (*Baron*) *Estate*, [1903] 1 I. R. 215.

(*c*) *Leonard* v. *Sussex* (*Earl*) (1705), 2 Vern. 526, 527.

(*d*) *Perrin* v. *Blake* (1770), 4 Burr. 2579; 1 Wm. Bl. 672; 1 Doug. (K. B.) 343, n.; 1 Hargrave's Law Tracts, 490; as to the controversy aroused by the case, see Fearne, Contingent Remainders, pp. 155 *et seq.*

(*e*) *Van Grutten* v. *Foxwell*, *Foxwell* v. *Van Grutten*, *supra*, at p. 663 1 Hargrave's Law Tracts, 562.

(*f*) *Doe* d. *Cotton* v. *Stenlake* (1810), 12 East, 515; *Hugo* v. *Williams* (1872), L. R. 14 Eq. 224; but the rule is excluded where the limitation is to the "heir" and he is given a life estate (*White* v. *Collins* (1718), Com. 289; *Pedder* v. *Hunt* (1887), 18 Q. B. D. 565).

(*g*) See pp. 216 *et seq.*, *ante*.

(*h*) 27 Hen. 8, c. 10.

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or shifting uses, and they can only be created in freeholds (*i*). Executory interests under wills can exist either in freeholds or in chattels real, and are similarly springing or shifting devises.

Nature of executory limitations.

425. While, both under the Statute of Uses (*j*) and by will, future interests can be created which do not comply with the rules applicable to remainders, they are distinct from remainders, and it is a fundamental rule that a limitation which in its inception can operate as a remainder shall not be allowed to operate as an executory limitation (*k*). Hence an executory limitation is a limitation of a future estate in land which does not comply with the rules for limitations at common law, and cannot in its inception take effect as a remainder, but which, nevertheless, is contained, as regards freeholds, in a conveyance operating under the Statute of Uses (*j*), and, as regards freeholds and chattels real, in a will (*l*). Executory devises, notwithstanding their freedom from common law rules, create, in effect, common law estates (*m*) and are treated of here. Shifting and springing uses do not create common law estates and are treated of subsequently (*n*).

Distinguished from contingent remainder.

426. The rule that a limitation in a will which can operate as a remainder shall not, apart from statute, operate as an executory devise, makes it necessary—though this is less important than formerly (*o*)—to distinguish between a contingent remainder and an executory devise. A remainder is limited to wait for and take effect upon the natural limitation of a preceding estate of freehold (*p*) other than a

(*i*) Because the statute only applies to freeholds. As to springing and shifting uses, see p. 279, *post*.

(*j*) 27 Hen. 8, c. 10.

(*k*) *Purefoy* v. *Rogers* (1671), 2 Saund. 380, 388; *Goodright* v. *Cornish* (1694), 4 Mod. Rep. 255, 259; *Carwardine* v. *Carwardine* (1758), 1 Eden, 27, 34; *Doe* d. *Mussell* v. *Morgan* (1790), 3 Term Rep. 763; *Brackenbury* v. *Gibbons* (1876), 2 Ch. D. 417, 419; *Re Wrightson, Battie-Wrightson* v. *Thomas*, [1904] 2 Ch. 95, 104, C. A.; *White* v. *Summers*, [1908] 2 Ch. 256, 263.

(*l*) Fearne, Contingent Remainders, p. 386; compare Challis, Law of Real Property, 3rd ed., p. 172.

(*m*) This seems to be so, for although devises in general only took effect under the Statutes of Wills (1540), 32 Hen. 8, c. 1; (1542-3), 34 & 35 Hen. 8, c. 5), see note (*i*), p. 168, *ante*, yet it is probable that executory devises were allowed on the analogy of the law relating to devises under special customs; see Williams, Real Property, 21st ed., p. 398.

(*n*) See pp. 279, *et seq.*, *post*.

(*o*) The importance of the difference between contingent remainders and executory interests lay, not only in the liability of contingent remainders to destruction by failure of the particular estate (see p. 224, *ante*), but also in the fact that contingent remainders could be barred by fine or recovery (as to fines and recoveries, see pp. 247 *et seq.*, *post*); executory devises could not be barred by recovery (Fearne, Contingent Remainders, p. 418), since they did not depend on the estate of the person who suffered the recovery (*Pells* v. *Brown* (1620), Cro. Jac. 590); but possibly they could be barred by fine levied by a tenant in fee and non-claim for five years (*Romilly* v. *James* (1815), 6 Taunt. 263, 274); and executory limitations after an estate tail could be barred by a recovery suffered before the event on which the executory limitation depended (*Page* v. *Hayward* (1704), 2 Salk. 570; Fearne, Contingent Remainders, p. 424); and see Challis, Law of Real Property, 3rd ed., p. 177.

(*p*) Where, for example, there was a devise to B. for life, remainder to C. for ninety-nine years, if he should so long live, remainder to the heirs of the body of C.; the last limitation was the next estate of freehold to B.'s

determinable fee (*q*). If a future interest does not wait for such determination, or if, in its inception, it cannot take effect at the determination of the preceding estate, it is an executory devise (*r*). But, in order that a future interest may be a remainder, it is sufficient that it can, in its inception, that is, according to the nature of its original limitation, take effect before, or *eo instanti* with, the determination of the particular estate; the improbability that it will actually thus take effect does not change it from a remainder to an executory interest (*s*).

Springing devises.

427. A future interest takes effect as a springing devise when it is so limited that it has no preceding estate of freehold to support it (*t*); or where there is a preceding estate limited, but there is necessarily a gap between the determination of the preceding estate and the vesting in possession of the future estate (*u*). The future interest may arise either at a time certain or on a contingency (*a*). The want of an immediately preceding freehold estate prevents the future interest from taking effect as a remainder, and accordingly it is valid as an executory devise, provided that it does not infringe the rule against perpetuities (*b*). The land, until the

life estate, and would have followed it in possession if it had vested by the death of C. in B.'s lifetime; hence it was a contingent remainder, and failed by B.'s death in the lifetime of C. (*Doe* d. *Mussell* v. *Morgan*, *supra*); or where there was a devise to B. for life, and after his death to his sons successively in tail male, and in default of such issue to the eldest son of C. who should first attain twenty-one years; B. died without issue while C.'s eldest son was under twenty-one; the estate limited to him was a remainder and, being limited by the will of a testator who died in 1847, failed (*White* v. *Summers*, [1908] 2 Ch. 256, 263; as to the reason for such failure, see p. 222, *ante*); and, as to remainders depending on double contingencies, see *Holmes* v. *Prescott* (1864), 12 W. R. 636, and *Perceval* v. *Perceval* (1870), L. R. 9 Eq. 386, both decisions on the same will; and p. 219, *ante*.

(*q*) A remainder cannot be limited on a determinable fee; see p. 171, *ante*.

(*r*) See p. 236, *post*.

(*s*) Fearne, Contingent Remainders, p. 395.

(*t*) See Fearne, Contingent Remainders, p. 395. *E.g.*, a devise to A. in fee to take effect at the expiration of six months from the testator's death (*Clarke* v. *Smith* (1699), 1 Lut. 793, 798; *Pay's Case* (1602), Cro. Eliz. 878); or a devise to the heir of A. after the death of A. where A. survives the testator (*Goodright* v. *Cornish* (1694), 1 Salk. 226; see *Harris* v. *Barnes* (1768), 4 Burr. 2157); or to the first son of A. and A. has no son at the testator's death (*Gore* v. *Gore* (1722), 2 P. Wms. 28; *Bullock* v. *Stones* (1754), 2 Ves. Sen. 521); or to a specified son of the testator when he shall attain twenty-one, and he is under twenty-one at the testator's death (*Doe* d. *Andrew* v. *Hutton* (1804), 3 Bos. & P. 643; see *Nicholl* v. *Nicholl* (1777), 2 Wm. Bl. 1159). Formerly, in order that an executory devise should be good it must have been expressed in the future tense (*Goodright* v. *Cornish*, *supra*; *Moore* v. *Parker* (1695), 1 Ld. Raym. 37), but this is not necessary, unless perhaps where the testator, by his use of the present tense, clearly shows that he intended only an immediate gift; see Fearne, Contingent Remainders, p. 536.

(*u*) *E.g.*, devise to A. for life, and after his death and one day, to the eldest son of B. (1 Plowd. 25 b); see *White* v. *Summers*, *supra*; Fearne, Contingent Remainders, pp. 398, 401; compare *Re Finch*, *Abbiss* v. *Burney* (1881), 17 Ch. D. 211, C. A.

(*a*) In springing devises "the devisor, without parting with the immediate fee, gives a future estate to arise either upon a contingency, or at a period certain, unpreceded by, or not having the requisite connection with, any immediate freehold to give effect to it" (Fearne, Contingent Remainders, p. 400).

(*b*) See title PERPETUITIES, Vol. XXII., p. 332.

SECT. 7. Remainders and Reversions.

devise takes effect in possession, devolves on the heir-at-law (*c*), or under the Land Transfer Act, 1897 (*d*), on the personal representative, and thus the freehold is not in abeyance (*e*).

Springing devise to a class.

428. When after an estate for life the property is devised to such of the children of the tenant for life as attain twenty-one either before or after the death of the tenant for life, the express inclusion of children attaining twenty-one after such death shows that a gap between the life estate and the future interests is contemplated. Hence, since the future interests cannot, as to children attaining twenty-one after the death, take effect as remainders, they are all executory devises (*f*); and so, too, where the future devise is to children of a third person who are born before or after the death of the tenant for life (*g*). In both cases the devise is to a class so defined as to include persons who cannot be ascertained till after the determination of the particular estate (*h*).

Shifting devises.

429. A future interest takes effect as a shifting devise when it is so limited that it does not wait for the natural determination of the preceding estate, but vests in possession upon an event which determines that estate otherwise than in accordance with its direct limitation. Thus, estates limited upon the natural determination of a life estate are remainders; but if there is a clause of forfeiture of the life estate, and the next interests are in that event accelerated, they take effect, on the event happening, as executory interests (*i*).

Similarly, where an estate in fee simple absolute has been limited, the land may be devised in a different direction on a contingent event, and the happening of the event shifts the fee accordingly (*j*),

(*c*) *Pay's Case* (1602), Cro. Eliz. 878; *Clarke* v. *Smith* (1699), 1 Lut. 793, 798; *Gore* v. *Gore* (1722), 2 P. Wms. 28, 47. The heir-at-law takes the rents and profits until the birth of a person entitled to them; and, if by the death of such person they are again undisposed of, the heir takes them until another person becomes entitled (*Hopkins* v. *Hopkins* (1734), Cas. *temp.* Talb. 44; (1738), 1 Atk. 581; (1749), 1 Ves. Sen. 268; *Bullock* v. *Stones* (1754), 2 Ves. Sen. 521).

(*d*) 60 & 61 Vict. c. 65; see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 238.

(*e*) *Harris* v. *Barnes* (1768), 4 Burr. 2157; see Challis, Law of Real Property, 3rd ed., pp. 169—172; and see p. 216, *ante*.

(*f*) *Re Lechmere and Lloyd* (1881), 18 Ch. D. 524; *Dean* v. *Dean*, [1891] 3 Ch. 150; *Re Bourne, Rymer* v. *Harpley* (1887), 56 L. T. 388; see *Re Wrightson, Battie-Wrightson* v. *Thomas*, [1904] 2 Ch. 95, 104, C. A.

(*g*) *Miles* v. *Jarvis* (1883), 24 Ch. D. 633.

(*h*) *White* v. *Summers*, [1908] 2 Ch. 256, 267.

(*i*) *Blackman* v. *Fysh*, [1892] 3 Ch. 209, C. A.; see *Re Leach, Leach* v. *Leach*, [1912] 2 Ch. 427. An estate in trustees to preserve contingent remainders does not necessarily prevent the ulterior limitation, if vested, from taking effect in possession on the premature determination of the life estate; see *Carr* v. *Erroll* (*Earl*) (1805), 6 East, 58; compare *Doe* d. *Heneage* v. *Heneage* (1790), 4 Term Rep. 13; *Stanley* v. *Stanley* (1809), 16 Ves. 491, 509.

(*j*) *Pells* v. *Brown* (1620), Cro. Jac. 590 (devise by a testator to C., his son and his heirs, and if C. died without issue during D.'s lifetime, then to D. and his heirs; C. had a vested fee simple, subject to a shifting devise in favour of D. on C.'s dying without issue in D.'s lifetime). In such cases failure of issue refers to failure at the date of death of the first devisee (*Porter* v. *Bradley* (1789), 3 Term Rep. 143; *Doe* d. *Smith* v. *Webber* (1818), 1 B. & Ald. 713; *Doe* d. *King* v. *Frost* (1820), 3 B. & Ald. 546; Fearne,

although at common law a fee cannot be limited after a fee (*k*); and an interest limited to take effect after a determinable fee, since it cannot be a remainder (*l*), is an executory interest (*m*).

An executory devise which puts an end to an estate tail and shifts the property to another person operates in defeasance of the estate tail, and is barred by a disentailing deed (*n*). Estates tail.

An estate *pur autre vie* may be the subject of an executory devise (*o*). Estates *pur autre vie*.

430. A shifting devise may, as in the case where it effectually disposes of the fee, defeat the prior estate altogether, but this is not necessary, and the prior estate is only interrupted to the extent required to give effect to the executory limitation. Thus, if the executory limitation confers a life estate, the life estate takes effect by way of exception out of the prior estate (*p*); and, if there is no person who can take the benefit of the executory limitation, the prior estate continues uninterrupted (*q*). But, if the form of the executory devise definitely puts an end to the prior estate, such prior estate will be defeated notwithstanding that the devise over fails to take effect (*r*). Effect of shifting devise.

Moreover, the executory limitation only takes effect on the happening of the prescribed event; this determines the prior estate and substitutes the executory devise. But the failure of the prior estate in some other manner does not let in the executory devise; the land goes instead to the heir-at-law or residuary devisee (*s*). Event on which it operates.

Contingent Remainders, pp. 395, 400). There may also be an executory devise in defeasance of a contingent remainder, if it is to take effect after the remainder has become vested; *e.g.*, devise to the first child of A. (who at the testator's death has no child) in fee, and if he dies under twenty-one, to B. in fee; see *Gulliver* v. *Wickett* (1745), 1 Wils. 105.

(*k*) *Pells* v. *Brown* (1620), Cro. Jac. 590; see p. 171, *ante*.

(*l*) See p. 217, *ante*.

(*m*) Challis, Law of Real Property, 3rd ed., pp. 81—85; and see p. 232, *ante*.

(*n*) *Doe* d. *Lumley* v. *Scarborough* (*Earl*) (1836), 3 Ad. & El. 2, 897, Ex. Ch.; *Milbank* v. *Vane*, [1893] 3 Ch. 79, C. A.; see *Miles* v. *Harford* (1879), 12 Ch. D. 691; and see p. 258, *post*. As to clauses shifting an estate from the eldest son for the time being, and as to the construction of shifting clauses generally, see *Shuttleworth* v. *Murray*, [1901] 1 Ch. 819, C. A.; affirmed, *sub nom. Law Union and Crown Insurance Co.* v. *Hill*, [1902] A. C. 263; compare *Collingwood* v. *Stanhope* (1869), L. R. 4 H. L. 43. As to shifting clauses on the owner becoming entitled to another estate, see *Monypenny* v. *Dering* (1852), 2 De G. M. & G. 145; *Langdale* (*Lady*) v. *Briggs* (1856), 8 De G. M. & G. 391, C. A.; and see title SETTLEMENTS.

(*o*) *Re Barber's Settled Estates* (1881), 18 Ch. D. 624; *Re Michell, Moore* v. *Moore*, [1892] 2 Ch. 87; and see p. 180, *ante*.

(*p*) *Gatenby* v. *Morgan* (1876), 1 Q. B. D. 685.

(*q*) *Jackson* v. *Noble* (1838), 2 Keen, 590.

(*r*) *Doe* d. *Blomfield* v. *Eyre* (1848), 5 C. B. 713, Ex. Ch.; *Robinson* v. *Wood* (1858), 27 L. J. (CH.) 726; *Hurst* v. *Hurst* (1882), 21 Ch. D. 278, 293, C. A.; see *Jones* v. *Davies* (1880), 28 W. R. 455.

(*s*) *E.g.*, a devise to A. in fee, but if A. dies under twenty-one, then to B. in fee. Here B. takes in the event of A. dying under twenty-one, but not in the event of A. attaining twenty-one and dying in the lifetime of the testator. The death causes a lapse, and there is consequently a failure of the prior estate; but the form of the executory devise does not allow

SECT. 7. **Remainders and Reversions.**

Executory devises become remainders.

431. Whenever one limitation in a devise is executory, all subsequent limitations must also be executory; for the division of the fee into particular estate and remainders being interrupted by an executory limitation, the interruption affects all later interests (*t*). But if, by an event subsequent to the making of the will, though during the testator's life, it becomes impossible that an executory interest should take effect, the next succeeding interest, if limited so as in this event immediately to follow the particular estate, will, on the testator's death, be a remainder, either vested or contingent (*a*); and an executory devise may also be changed into a remainder by an event happening after the testator's death (*b*). But the converse does not hold to the same extent. A remainder which fails as such during the testator's lifetime can take effect as an executory devise (*c*); but a remainder cannot, at common law, be changed to an executory devise after the testator's death (*d*).

Nature of limitation determined by the event.

It is not necessary that a future interest should in its inception be fixed in its nature. It may be left uncertain whether it is a remainder or an executory interest, and it is then one or the other according to the event (*e*).

B. to take (*Tarbuck* v. *Tarbuck* (1835), 4 L. J. (CH.) 129; *Brookman* v. *Smith* (1872), L. R. 7 Exch. 271, Ex. Ch.). The strict rule of construction, however, is not followed in the case of a determinable life interest, and the gift over may take effect on death, although in terms only given in the event of determination during the life (*Re Seaton, Ellis* v. *Seaton* (1912), 107 L. T. 192). As to the construction of executory devises, see *O'Mahoney* v. *Burdett* (1874), L. R. 7 H. L. 388; and see title WILLS.

(*t*) See Fearne, Contingent Remainders, p. 503; *Reev* v. *Long* (1694), Carth. 309.

(*a*) *Doe* d. *Harris* v. *Howell* (1829), 10 B. & C. 191, 200; 2 Preston, Abstracts of Titles, 173, giving, as an example, a devise to A. for life from next Michaelmas, remainder to his first and other sons in tail. If the testator lives beyond Michaelmas, and A.'s estate takes effect, the limitation in tail is no longer executory, but a contingent remainder.

(*b*) *Doe* d. *Harris* v. *Howell*, *supra*. But this appears to mean no more than that if, after the testator's death, the event happens which shifts the estate, and the executory limitation takes effect as a fixed future interest to follow the particular estate, it takes effect as a remainder; see *Hopkins* (*alias Dare*) v. *Hopkins* (1738), 1 Atk. 581, 589.

(*c*) Where, for instance, a devisee for life dies in the testator's lifetime, and this leaves, at the testator's death, interests limited as contingent remainders, none of which are vested: they will become executory interests (*Hopkins* v. *Hopkins* (1734), Cas. *temp.* Talb. 44; (1738) 1 Atk. 581; *Doe* d. *Scott* v. *Roach* (1816), 5 M. & S. 482, 492; Fearne, Contingent Remainders, p. 525; 2 Preston, Abstracts of Titles, 154). In such cases, the court leaned in favour of an executory devise, in order to give effect to the testator's intention.

(*d*) 2 Preston, Abstracts of Titles, 172; *Mogg* v. *Mogg* (1815), 1 Mer. 654, 704, *arguendo*. If this had been possible, contingent remainders could always have been saved from destruction by treating them as executory devises; and this in fact is the mode in which they are now by statute saved from destruction; see p. 225, *ante*.

(*e*) Thus, under a limitation to A. in tail, if he shall attain twenty-one or have issue, but if he shall die under twenty-one or without issue to B. in fee. If A. dies without issue under twenty-one, no estate vests in him, and B. takes by way of executory devise; if A. attains twenty-one, the estate tail vests in him, and the future devise to B., in the event of his now dying without issue, is a remainder on the estate tail (*Brownsword* v. *Edwards* (1751), 2 Ves. Sen. 243; Fearne, Contingent Remainders, p. 526; *Doe* d.

Where a future interest is given on two independent events, one of which makes it a remainder and the other an executory interest, an illegality affecting the future interest in one contingency does not prevent it from taking effect in the event of the lawful contingency (*f*).

Statutory defeasance of executory limitation.

432. A restriction is placed by statute on the creation of executory interests to take effect on failure of issue. Where, under an instrument coming into operation after the 31st December, 1882 (*g*), there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for a term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period of time or not, the executory limitation becomes void as soon as any issue of the class in question has attained the age of twenty-one years (*h*).

SUB-SECT. 6.—*Possibility of Reverter.*

Possibility of reverter.

433. When a limited estate is carved out of the fee simple, what remains of the fee is a remainder or reversion (*i*). When the fee simple itself is not absolute, but is liable to be determined either by a collateral limitation or a breach of a condition, the chance that this may happen is a possibility of reverter (*k*). Thus the limitation of a determinable fee simple (*l*), or of a fee simple subject to a condition (*m*), carries with it as an incident a possibility of reverter (*n*). It is the same with a conditional fee in copyhold lands (*o*).

Herbert v. *Selby* (1824), 2 B. & C. 926; *White* v. *Summers*, [1908] 2 Ch. 256, 266).

(*f*) *Evers* v. *Challis* (1859), 7 H. L. Cas. 531 (in the courts below, *Doe* d. *Evers* v. *Challis* (1850), 18 Q. B. 224; *Challis* v. *Doe* d. *Evers* (1852), 18 Q. B. 231, Ex. Ch.); and see *ibid.*, on *Gulliver* v. *Wickett* (1745), 1 Wils. 105, and Fearne's comment thereon (Fearne, Contingent Remainders, p. 396).

(*g*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 10 (2). As to this provision for avoiding executory limitations, see Challis, Law of Real Property, 3rd ed., p. 178.

(*h*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 10 (1). If there is a gift over in case the first devisee dies "without child or children," this means without leaving a child or children, and, on the birth of a child, the devisee holds subject to an executory gift over in the event of his not having any child who survives him or attains twenty-one in his lifetime (*Re Booth, Pickard* v. *Booth*, [1900] 1 Ch. 768).

(*i*) See p. 212, *ante*.

(*k*) Under a fee simple absolute the chance that the lord will get back the estate depends on its failure for lack of heirs of the tenant for the time being. This is escheat (see title DESCENT AND DISTRIBUTION, Vol. XI., pp. 23 *et seq.*), and not reverter (Fearne, Contingent Remainders, p. 381, note (a)).

(*l*) See pp. 170, 171, *ante*.

(*m*) See pp. 168—170, *ante*; *Re Hollis' Hospital (Trustees) and Hague's Contract*, [1899] 2 Ch. 540.

(*n*) See Challis, Law of Real Property, 3rd ed., p. 82.

(*o*) *Pemberton* v. *Barnes*, [1899] 1 Ch. 544. As to such fees, see p. 172, *ante*; *Stafford (Earl)* v. *Buckley* (1750), 2 Ves. Sen. 170, 180. Before the Statute De Donis (stat. (1285) 13 Edw. 1) a possibility of reverter existed on conditional fees in freehold lands (Co. Litt. 22 a; *Carter* v. *Barnardiston* (1718), 1 P. Wms. 505, 515); and see title COPYHOLDS, Vol. VIII., pp. 70 *et seq.*

SECT. 7. Remainders and Reversions.

SUB-SECT. 7.—*Spes Successionis.*

Spes successionis.

434. No one can have any estate or interest, at law or in equity, in the property of a living person to which he hopes to succeed as his heir-at-law or next of kin; and it is the same where there is a limitation by will or settlement of real or personal property to the heir or statutory next of kin of a living person; or where the limitation is not to the actual heir or next of kin at the death, but to the persons who would be heir or next of kin if the ancestor were to die at some future time (*p*). Such mere expectation, known as a *spes successionis*, confers no actual interest in the property, not even a contingent interest (*q*), or an interest in expectancy (*r*), since *nemo est hæres viventis*; and, as long as the ancestor is alive, there is no person in whom the right to take by descent resides. Hence *spes successionis* is not a title to property (*s*), nor does it confer a right to sue for the preservation of the property (*t*).

SECT. 8.—*Chattels which Descend as Real Estate.*

SUB-SECT. 1.—*In General.*

Devolution on heir.

435. In general, chattels personal devolve upon the death of the owner on his personal representatives, to be disposed of by them as personal estate (*a*); but, in certain cases, they are so associated with real estate that they follow its quality as regards inheritance, and, in case of intestacy, they devolve on the heir-at-law, subject to the rights of the personal representatives under the Land Transfer Act, 1897 (*b*). Such chattels are either title deeds or heirlooms.

(*p*) *Re Parsons, Stockley* v. *Parsons* (1890), 45 Ch. D. 51.

(*q*) See Watkins on Conveyancing, 8th ed., p. 219, n., referred to in *Re Parsons, Stockley* v. *Parsons, supra*, at p. 57; *Allcard* v. *Walker*, [1896] 2 Ch. 369, 380. It confers no interest at all, either vested or contingent, but only an expectation of an interest (*Clowes* v. *Hilliard* (1876), 4 Ch. D. 413, 416). As to the effect of an assignment of a *spes successionis*, see title CHOSES IN ACTION, Vol. IV., p. 376.

(*r*) *Re Green, Green* v. *Meinall*, [1911] 2 Ch. 275, decided on the saving for interests (*inter alia*) in expectancy in the Deceased Wife's Sister's Marriage Act, 1907 (7 Edw. 7, c. 47), s. 2.

(*s*) *Re Parsons, Stockley* v. *Parsons, supra*, at p. 56. In this case it was held that a married woman who had an expectation before the Married Women's Property Act, 1882 (55 & 56 Vict. c. 75), of taking property as next of kin, but who did not actually take as one of the next of kin till after the Act, became entitled after the Act and took for her separate use; see title HUSBAND AND WIFE, Vol. XVI., p. 349. Similarly, a wife's *jus relictæ* under Scots law is, during her husband's life, a mere *spes successionis*, and is not "an estate or interest" in property coming to her "during the coverture" within the meaning of the usual covenant for settlement of after-acquired property (*Re Simpson, Simpson* v. *Simpson*, [1904] 1 Ch. 1, C. A.).

(*t*) See *Davis* v. *Angel* (1862), 4 De G. F. & J. 524, 529; *Clowes* v. *Hilliard, supra*.

(*a*) See titles EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 218; PERSONAL PROPERTY, Vol. XXII., pp. 408, 409.

(*b*) 60 & 61 Vict. c. 65, s. 1; see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 238. The land vests in the first instance in the personal representatives (*ibid.*); and so also do chattels of the nature in question, assuming that they are for all purposes real estate.

SECT. 8.
Chattels which Descend as Real Estate.

Owner's right to custody.

436. The title deeds of land are of use only to the owner of land in order to enable him to maintain his title (*c*), and it is the general rule that whoever is entitled to the land has also a right to all the title deeds affecting it (*d*). Accordingly, the owner of land is entitled to the custody of the title deeds relating to it, and can maintain an action for them notwithstanding that the conveyance to him contains no express grant of the deeds (*e*).

Variations of the rule.

This rule is necessarily varied: first, where the deeds are common to the titles of the owners of different lands; and, secondly, where the land is subject to different simultaneous or successive interests. In the case of common title deeds, arrangements are usually made upon sales or other dispositions of land as to the owner who shall hold them, and he gives an acknowledgment for production and for delivery of copies to the other owners, and also, unless he is a trustee or other fiduciary owner, an undertaking for their safe custody (*f*). But, without such express stipulations, any owner of land comprised in the title deeds appears to have the right to require their production (*g*). Questions of the right to title deeds arise between persons having partial interests in the land, that is, co-owners; tenant for life and remainderman; trustee and *cestui que trust;* mortgagor and mortgagee; and landlord and tenant. As between co-owners, whoever obtains the deeds is entitled to hold them, but he must produce them to the others (*h*); as between a legal tenant for life and remainderman, the tenant for life is entitled to the deeds (*i*); as between trustee and *cestui que trust,* the *cestui que trust,* if he is entitled to possession, although he is only tenant for life, may be given the custody of them by the court (*j*); as between mortgagor and mortgagee, the possession of the deeds by the mort-

(*c*) "The evidences are, as it were, the sinews of the land" (Co. Litt. 6 a).

(*d*) *Harrington* v. *Price* (1832), 3 B. & Ad. 170, 173.

(*e*) *Re Williams and Newcastle's (Duchess) Contract,* [1897] 2 Ch. 144, 148. Formerly a feoffor who warranted the feoffee's title was entitled to retain all deeds containing warranties on which he might himself have to rely for maintaining the feoffee's title; but, if there was no warranty, the feoffee took the deeds (Co. Litt. 6 a; *Buckhurst's (Lord) Case* (1598), 1 Co. Rep. 1 a; *Yea* v. *Field* (1788), 2 Term Rep. 708). It has been said that upon a conveyance under the Statute of Uses, 27 Hen. 8, c. 10), the grantee to use is entitled to the deeds and not the *cestui que use* (1 Sanders, Uses and Trusts, 5th ed., p. 117); but the legal estate which vests in the *cestui que use* carries with it the right to the deeds; see Co. Litt. 6 a, note (4); *Malone* v. *Minoughan* (1862), 14 I. C. L. R. 540; Williams, Law of Personal Property, 16th ed., p. 128.

(*f*) See Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 9; and, for forms of acknowledgment, see Encyclopædia of Forms and Precedents, Vol. XII., p. 463; and, as to the effect of an acknowledgment, see title SALE OF LAND. As to the statutory rights of an owner who on a sale retains part of the land, see the Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2; and see title SALE OF LAND.

(*g*) See the Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2, which suggests that there is an equitable right only; and see title SALE OF LAND.

(*h*) See title MORTGAGE, Vol. XXI., p. 205.

(*i*) *Garner* v. *Hannyngton* (1856), 22 Beav. 627; and see pp. 176, 177, *ante:* title SETTLEMENTS.

(*j*) *Re Wythes, West* v. *Wythes,* [1893] 2 Ch. 369; and see note (*f*), p. 281, *post,* and title TRUSTS AND TRUSTEES.

SECT. 8. **Chattels which Descend as Real Estate.**

gagee is an essential part of the security (*k*); and, as between landlord and tenant, the tenant has no right to the deeds relating to the freehold interest (*l*), but he is entitled to those relating to the term (*m*).

Devolution on death.

437. Apart from modern statutory enactment (*n*), deeds, court rolls, and other evidences of title to land, pass on the death of the tenant in fee simple intestate to the heir-at-law and not to the executor; and so also does a box or chest exclusively appropriated to them (*o*); but the tenant in fee simple can dispose of the deeds in his lifetime (*p*).

SUB-SECT. 3.—*Heirlooms.*

Nature of heirlooms.

438. Heirlooms (*q*) are articles which, either from their connection with real estate or by special custom, pass, on the death of the ancestor, to the heir (*r*). They are connected in this manner with real estate when they are an incident of the tenure of land, or are necessary for maintaining the dignity of the owner of land or the possessor of a title. An ancient horn, where the tenure is by cornage (*s*), the garter and collar of a knight (*t*), the ancient jewels of the Crown (*a*), and a patent creating a dignity, are all heirlooms (*b*). Chattels may, possibly, also be heirlooms on the ground that they are an essential feature in the ordinary enjoyment of the land; as, for example, wild deer in a park (*c*), assuming that they can be the subject of property at all. If they are so far tame as to be under control, they go to the executor (*d*).

(*k*) See title MORTGAGE, Vol. XXI., pp. 204 *et seq.*; *Re Ingham, Jones* v. *Ingham*, [1893] 1 Ch. 352, 361; and as to priorities as affected by the possession of title deeds, see title MORTGAGE, Vol. XXI., p. 342. As to the effect of a plea of purchase for value without notice on the right to deeds, see title EQUITY, Vol. XIII., p. 78.

(*l*) *Harper* v. *Faulder* (1819), 4 Madd. 129, 138; *Hotham* v. *Somerville* (1842), 5 Beav. 360; and see title MORTGAGE, Vol. XXI., p. 204.

(*m*) See *Hooper* v. *Ramsbottom* (1815), 6 Taunt. 12.

(*n*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1; see note (*b*), p. 238, *ante*.

(*o*) 2 Bl. Com. 428; Williams, Law of Executors and Administrators, 10th ed., p. 548; and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 218.

(*p*) *Kelsack* v. *Nicholson* (1596), Cro. Eliz. 496.

(*q*) From loom—Anglo-Saxon: tool, utensil (Oxford English Dictionary, *sub voce* "Heirloom").

(*r*) *Hill* v. *Hill*, [1897] 1 Q. B. 483, 494, C. A.; and, as to heirlooms, see, generally, 2 Bl. Com. 427; Williams, Law of Executors and Administrators, 10th ed., pp. 545 *et seq.*; titles EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 218; SETTLEMENTS. Title deeds are sometimes classed as heirlooms (2 Bl. Com. 427), but it is more convenient to treat them separately.

(*s*) *E.g.*, the Pusey horn (*Pusey* v. *Pusey* (1684), 1 Vern. 273). Tenure by cornage imposed on the tenant the duty of winding a horn to warn the king's subjects of the entry into the kingdom of the king's enemies (Littleton's Tenures, s. 156; Co. Litt. 106 b).

(*t*) So held in *Northumberland's* (*Earl*) *Case* (1584), Owen, 124, but probably the Crown has a claim.

(*a*) Co. Litt. 18 b.

(*b*) *Hill* v. *Hill*, *supra*. Armour and other relics hung in a church in honour of an ancestor are also heirlooms. The parson cannot remove them, even assuming that they are annexed to his freehold, and the heir has an action against any person who defaces them (Co. Litt. 18 b).

(*c*) 2 Bl. Com. 427.

(*d*) *Morgan* v. *Abergavenny* (*Earl*) (1849), 8 C. B. 768; see Williams,

SECT. 8. Chattels which Descend as Real Estate.

By special custom, such articles as the best bed and utensils, and other household implements, may be heirlooms, but the custom must be strictly proved (*e*).

Powers of tenant in fee simple.

439. The tenant in fee simple can dispose of heirlooms during his life, but if he does not do so, and permits the land to descend, he cannot devise the heirlooms in a different direction (*f*).

Chattels in in the nature of heirlooms.

440. Chattels which are not heirlooms at common law can be settled in a manner corresponding to the uses or trusts for a settlement of land so as to be inseparable from the land until a tenant in tail in possession becomes entitled to them. They then become his absolute property. These so-called heirlooms are in fact the only heirlooms which usually occur in modern times (*g*).

SECT. 9.—*Limitation of Estates in Succession.*

Settlements.

441. The limitation of estates in succession is dealt with elsewhere (*h*).

Part III.—Estates in Land Created by or under Statute.

SECT. 1.—*Estates Tail.*

SUB-SECT. 1.—*In General.*

Origin of estate tail.

442. Estates tail arise from the operation of the Statute De Donis (*i*) on conditional fees at common law (*a*).

At common law a limitation to a man and a special class of heirs, such as the heirs male of his body by a specified wife, was a conditional fee simple (*b*). The condition was performed by the

Law of Personal Property, 16th ed., p. 140; titles ANIMALS, Vol. I., p. 366; GAME, Vol. XV., p. 262.

(*e*) Co. Litt. 18 b; 2 Bl. Com. 428; Williams, Law of Executors and Administrators, 10th ed., p. 545. It would seem, however, that the custom need not be a custom in the strict sense so as to require proof of immemorial user (see title CUSTOM AND USAGES, Vol. X., p. 222), but that it would be sufficient to show the custom of the family for several generations. It is doubtful, however, whether any such customs now exist. Articles which are so attached to land or buildings as not to be removable without damage have been said to be heirlooms by general custom (2 Bl. Com. 428), but they are in fact fixtures and follow the land because they are in law actually part of it; see titles EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 220; LANDLORD AND TENANT, Vol. XVIII., pp. 416 *et seq.* Such fixtures may even include movable articles if they are essential to the scheme of a building (*ibid.*, p. 418).

(*f*) 2 Bl. Com. 429; Williams, Law of Executors and Administrators, 10th ed., p. 546.

(*g*) See title SETTLEMENTS.

(*h*) See title SETTLEMENTS.

(*i*) Statute of Westminster II. (1285), 13 Edw. 1, c. 1; see Digby, History of the Law of Real Property, 5th ed., p. 226.

(*a*) Estates tail can only be created in copyhold lands if there is a custom of entail in the particular manor (see title COPYHOLDS, Vol. VIII., p. 70), and cannot be created in leaseholds at all (see p. 267, *post*).

(*b*) *Willion* v. *Berkley* (1562), Plowd. 222—252; see Pollock and Maitland, History of English Law, Vol. II., pp. 17—19; Challis, Law of Real Property, 3rd ed., p. 263; p. 172, *ante*.

SECT. 1. Estates Tail.

birth of issue of the prescribed class, and thereafter the grantee had a fee simple absolute for the purpose of alienation (*c*); but, if he died without having alienated the land, the form of the gift was observed, and it followed the prescribed course of descent (*d*). The Statute De Donis (*e*) enacted that the will of the grantor according to the form of the grant should thenceforth be observed, so that the grantee of the land under such a condition should have no power to aliene the land (*f*), but that it should remain to the issue after the death of the grantee, or should revert to the grantor or his heirs on failure of the prescribed issue of the grantee, whether because there was no such issue, or because, after issue born, the line of issue failed. The statute (*e*), therefore, prevented the estate from ever becoming a fee simple absolute, and converted it into an estate of inheritance of a restricted nature, whence the estate was called *feudum talliatum*, or an estate tail (*g*).

SUB-SECT. 2.—*Classification.*

Estate in tail general.

443. An estate in tail in its widest form is where lands or tenements are limited to a man and the heirs of his body without restriction as to the wife of whom the heirs are to be born or of the sex of the heirs (*h*); and similarly where the limitation is to a woman and the heirs of her body (*i*). Such an estate is called an "estate in tail general." However often the donee in tail is married, his or her issue of every such marriage, whether male or female, are, in successive order, capable of inheriting under the entail; so that elder sons and their issue will inherit in order before younger sons; sons and their issue will inherit before daughters and their issue; and daughters will inherit equally *inter se*, the issue of each daughter taking her share (*j*).

Estate in tail male or tail female.

444. An estate in tail general may be restricted to heirs male or heirs female, and is called, accordingly, an "estate in tail male general" (*k*), or an "estate in tail female general" (*l*). Under a limitation in tale male general only male issue claiming continuously through male issue can inherit; and under a limitation in tail female general only female issue claiming continuously through

(*c*) He had a fee simple also for the purpose of forfeiture, and for the purpose of charging the land with rent, common, or the like (Co. Litt. 19 a). If the grantee aliened before issue born, this barred the issue afterwards born; but it did not bar the grantor's possibility of reverter, and he could re-enter if the issue died without issue (*ibid.*).

(*d*) Co. Litt. 19 a; and see p. 172, *ante*.

(*e*) Stat. (1285) 13 Edw. 1, c. 1.

(*f*) *A.-G.* v. *Marlborough* (*Duke*) (1818), 3 Madd. 498, 532.

(*g*) Littleton's Tenures, s. 18; Co. Litt. 22 a. But an estate tail still resembles a fee simple in that it is exempt from liability for waste; see *Bowles'* (*Lewis*) *Case* (1616), 11 Co. Rep. 79 b, fourth resolution.

(*h*) Littleton's Tenures, s. 14.

(*i*) *Ibid.*, s. 15.

(*j*) 2 Bl. Com. 113. With regard to descent to heirs, the same rules apply as in the case of descent of an estate in fee simple, subject to the restriction of the line of inheritance to heirs of the body (see title DESCENT AND DISTRIBUTION, Vol. XI., pp. 1 *et seq.*); as to descent to daughters, see p. 210, *ante*).

(*k*) Littleton's Tenures, s. 21.

(*l*) *Ibid.*, s. 22.

female issue can inherit (*m*). But the latter limitation does not occur in practice, since a limitation in tail male followed by a remainder in tail female does not exhaust the possible issue (*n*); the appropriate remainder after a limitation in tail male is a limitation in tail without restriction of sex (*o*).

Estate in tail special.

445. An estate in tail may be restricted to the heirs of the body of two specified persons, and then it is known as an "estate in tail special" (*p*). This may be, first, where the limitation is to a single donee and the heirs of his or her body by a specified wife or husband; and, secondly, where the limitation is to a man and woman who are either married or are capable of lawful marriage. In the first case, the donee has an estate in tail special (*q*); in the second case, the donees have a joint estate in tail special (*r*). An estate in tail special may be further restricted in the same way as an estate in tail general to male heirs of the body or female heirs of the body (*s*).

Classification of estates tail.

446. Hence estates tail may exist in the following forms (*t*):—

(1) Tail general: unrestricted as to spouse and as to sex.

(2) Tail male general: unrestricted as to spouse; restricted to male issue.

(3) Tail female general: unrestricted as to spouse; restricted to female issue.

(4) Tail special: restricted to two defined spouses; unrestricted as to sex.

(5) Tail male special: restricted to two defined spouses and to male issue.

(6) Tail female special: restricted to two defined spouses and to female issue.

SUB-SECT. 3.—*Creation.*

(i.) *At Common Law.*

Heirs of the body.

447. The appropriate way of creating an estate tail is to limit

(*m*) Thus, under a limitation in tail male, the son of a daughter cannot inherit, nor, under a limitation in tail female, the daughter of a son (Littleton's Tenures, s. 24; Co. Litt 25 a, b).

(*n*) Thus, in a limitation in tail male with remainder in tail female, if the donee has issue a son, who has issue a daughter, who has issue a son, neither of the last two is included (Co. Litt. 25 b).

(*o*) "The safest way, when a man will entail his lands to the heirs male and female of his body, is to limit the first estate to him and the heirs male of his body, the remainder to him and to the heirs of his body, and then all his issues whatsoever are inheritable" (Co. Litt. 25 b). But if lands are given to a man and to the heirs male or female of his body, this is an estate in tail general (*ibid.*); see Challis, Law of Real Property, 3rd ed., p. 287; and see note (*i*), p. 245, *post.*

(*p*) Littleton's Tenures, s. 16.

(*q*) *Ibid.*, s. 29.

(*r*) *Ibid.*, s. 16; Co. Litt. 20 b; see p. 200, *ante.* If the gift is to husband and wife, and to the heirs of the body of the husband, the husband has an estate in tail general, and the wife an estate for life (Littleton s Tenures, s. 26); and see other similar cases (*ibid.*, ss. 27, 28).

(*s*) Littleton's Tenures, s. 25.

(*t*) The late Mr. Challis suggested a classification under which general tail was opposed to special tail, and tail general to tail male and female (Challis, Law of Real Property, 3rd ed., p. 290), but in fact general tail and tail general are used indifferently, and the suggested classification seems liable to lead to confusion.

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the land to the donee and the heirs of his body (*a*). The use of the word "heirs," either expressly in the limitation of the estate or by reference to some other limitation in which it is used (*b*), was, before 1882, essential if the estate were created by deed. It cannot be supplied by other words, such as "issue" or "seed," which, though they denote the relation of ancestor and descendant, do not specifically point to capability of inheritance (*c*). But the use of the words "of his body" is not essential, and it is sufficient if any words are used which expressly or by implication denote that the heirs are to issue from the body of the donee; thus an estate tail is created by a limitation to the donee and "the heirs of his flesh," or "from him proceeding" (*d*).

(*a*) Or, more fully, "to the donee and the heirs of his body begotten." A limitation to A. "and the heirs of his body" is as good as to "his heirs of his body" (Co. Litt. 26 a; see Challis, Law of Real Property, 3rd ed., p. 295; and compare note (*n*), p. 165, *ante*). But the limitation is good without the word "begotten," and when this word is used it is indifferent in what tense it is expressed; thus, a limitation "to the donee and the heirs of his body whom he has begotten" extends to issue begotten afterwards, and a limitation to him "and the heirs of his body to be begotten" extends to issue already begotten (Co. Litt. 20 b; *Hebblethwaite* v. *Cartwright* (1734), Cas. *temp.* Talb. 31, 32; *Doe* d. *James* v. *Hallett* (1813), 1 M. & S. 124; *Gabb* v. *Prendergast* (1855), 1 K. & J. 439, 442); but earlier born issue are excluded if such an intention is shown (*Anon.* (1584), 3 Leon. 87; *Locke* v. *Dunlop* (1888), 39 Ch. D. 387, C. A.; see *Doe* d. *James* v. *Hallett, supra*). As to the effect of statutory provisions upon the common law rule, see pp. 246, 247, *post*.

(*b*) Thus, a limitation to A. and the heirs of his body, remainder to B. in manner aforesaid, creates an estate tail in remainder in B. (Co. Litt. 20 b; see *Goodright* d. *Burton* v. *Rigby* (1792), 2 Hy. Bl. 46, 62, as to confirmation by statute of an estate tail already created).

(*c*) Since fee tail is a fee simple at common law, the word "heirs" is as essential to the limitation in a deed as in the case (apart from statute; see pp. 165, 166, *ante*) of a limitation in a fee simple (Co. Litt. 20 a, b; *Nevil* v. *Nevil* (1618), 1 Brownl. 152; *Seagood* v. *Hone* (1634), Cro. Car. 366; *Makepiece* v. *Fletcher* (1734), Com. 457; *Wheeler* v. *Duke* (1832), 1 Cr. & M. 210; *Dawson* v. *Dawson* (1850), 13 I. L. R. 472; *Phillips* v. *James* (1865), 2 Drew. & Sm. 404, 411; affirmed 3 De G. J. & Sm. 72, C. A.). But a grant in frankmarriage—*i.e.*, a gift to a man and his wife (a near relation of the donor) by the words "in frankmarriage," which were words of art—created an estate tail without the word "heirs" (Littleton's Tenures, s. 17; Co. Litt. 21 b; Challis, Law of Real Property, 3rd ed., p. 293). Possibly, in the case of an estate tail, an exception is allowed to the rule applicable to estates in fee simple, namely, that in a deed (apart from statute; see pp. 165, 166, *ante*) the word "heirs" in the plural is essential (Co. Litt. 22 a; *Warrick* v. *Warrick* (1746), 3 Atk. 291; *Dubber* d. *Trollope* v. *Trollope* (1734), Amb. 453, 457; *Chambers* v. *Taylor* (1837), 2 My. & Cr. 376, 387); though in a will the singular number is sufficient (*Richards* v. *Bergavenny* (*Lady*) (1695), 2 Vern. 324; *White* v. *Collins* (1718), Com. 289; *Dubber* d. *Trollope* v. *Trollope, supra*; and see p. 165, note (*n*), *ante*); but in applying the rule in *Shelley's Case* (see pp. 226, 229, *ante*), words of limitation added to the word "heir" make it a word of purchase (*Archer's Case* (1597), 1 Co. Rep. 66 b; *Bayley* v. *Morris* (1799), 4 Ves. 788; *Chambers* v. *Taylor, supra*). And as to wills, see note (*t*), p. 229, *ante*; title WILLS.

(*d*) Co. Litt. 20 b; *Beresford's Case* (1607), 7 Co. Rep. 41 a; *Idle* v. *Cooke* (1705), 2 Ld. Raym. 1144, 1153; *Jack* d. *Westby* v. *Fetherstone* (1829), 2 Hud. & B. 320; compare *Cotton's Case* (1591), 1 Leon. 211; S. C., *sub nom. Smy* v. *June*, Cro. Eliz. 219 (where there were no words equivalent to "of the body," and an estate tail was not created). An estate tail has been created by a limitation to "heirs male" without "of the body" where there were circumstances showing that these words should have formed part of the limitation (*Gilmore* v. *Harris* (1693), Carth. 292).

"Heirs" meaning "heirs of the body."

Fee simple reduced to fee tail.

448. A limitation to the grantee and his heirs, giving *primâ facie* a fee simple, is cut down to an estate tail if words are added which show that "heirs" means "heirs of the body," where, for example, there is a gift over if the grantee dies "without heirs of his body" (*e*); or, where the gift over is in favour of a person who is capable of being collateral heir, and it is to take effect if the first grantee dies "without heirs" (*f*); or where the event on which the gift is to take effect depends on the existence of a collateral heir of the first grantee on his death (*g*); and perhaps a gift over if the grantee dies "without issue" restricts his *primâ facie* fee simple to an estate tail (*h*).

Heirs "male" or "female."

449. The variations in the limitation of estates tail required to create estates in tail special, and estates tail male or female, whether in tail general or special, follow from the nature of these estates. The addition to "heirs" of the words "male" or "female" creates an estate in tail male or tail female (*i*), and the specification, in a limitation to the donee and the heirs of his or her body, of the wife on whose body they are to be begotten, or the husband by whom

(*e*) Co. Litt. 21 a; and compare p. 244, *ante*.

(*f*) Fearne, Contingent Remainders, p. 466; *Doe* d. *Littledale* v. *Smeddle* (1818), 2 B. & Ald. 126; *Wall* v. *Wright* (1837), 1 Dr. & Wal. 1; *Re Smith's Estate* (1891), 27 L. R. Ir. 121; *Re Waugh, Waugh* v. *Cripps*, [1903] 1 Ch. 744.

(*g*) *Re Waugh, Waugh* v. *Cripps, supra*, at p. 747.

(*h*) There are several authorities to this effect; see *Canon's Case* (1559), 3 Leon. 5; *Beck's Case* (1630), Litt. 344; and see *ibid.*, pp. 159, 253, 285, 315; S. C., *sub nom. Boreton* v. *Nicholls* (1634), Cro. Car. 363; *Leigh* v. *Brace* (1695), 1 Carth. 343; 5 Mod. Rep. 266; 1 Ld. Raym. 101; 3 Salk. 337. According to the report in Carthew, the last decision turned on the limitation being by way of use, it being said that in uses, as in wills, the intention prevails; but this is erroneous, and the decision was given on the legal effect of the limitation; see *Tapner* d. *Peckham* v. *Merlott* (1739), Willes, 177, 181; *Fisher* v. *Wigg* (1701), 1 P. Wms. 14, 15; *Bamfield* v. *Popham* (1703), 1 P. Wms. 54, *per* WRIGHT, Lord Keeper, at p. 57, note (2); *Smith* v. *Smith* (1856), 5 I. Ch. R. 88; *Morgan* v. *Morgan* (1870), L. R. 10 Eq. 99. But the construction is different where the words are "in default of such issue" (*Idle* v. *Cooke* (1705), 2 Ld. Raym. 1144; 1 P. Wms. 70), or if the grantee dies "without leaving issue" (*Olivant* v. *Wright* (1878), 9 Ch. D. 646); and, since there appears to be no substantial ground of distinction, it may be that the cases first cited would not now be followed. A reference to death without issue does not enlarge an express estate for life to an estate tail (*Seagood* v. *Hone* (1634), Cro. Car. 366). As to implication of an estate tail arising upon a devise over after a failure of issue of the first devisee, see, in the case of wills before the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), *Gardner* v. *Sheldon* (1671), Vaugh. 259; *Parr* v. *Swindels* (1828), 4 Russ. 283; *Key* v. *Key* (1853), 4 De G. M. & G. 73, C. A.; *Atkinson* v. *Holtby* (1863), 10 H. L. Cas. 313; *Eastwood* v. *Avison* (1869), L. R. 4 Exch. 141; and, in the case of wills since the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), see *ibid.*, s. 29; title WILLS. As to implication of an estate tail upon a devise to the devisee and his children or issue, where he has no issue at the time of the devise, see *Wild's Case* (1599), 6 Co. Rep. 16 b. A devise to A. and his heirs with a proviso that neither he nor his heirs to the third generation shall sell or mortgage the land creates an estate tail (*Mortimer* v. *Hartley* (1851), 3 De G. & Sm. 316; 6 Exch. 47; (1848) 6 C. B. 819; and see *Hamilton* v. *West* (1846), 10 I. Eq. R. 75; *Dodds* v. *Dodds* (1860), 11 I. Ch. R. 476).

(*i*) See p. 242, *ante*. A limitation to heirs of the body, males to be preferred before females, creates an estate in tail male in the first instance (*Denn* d. *Creswick* v. *Hobson* (1770), 2 Wm. Bl. 695).

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they are to be begotten, creates an estate in tail special (*k*). But the spouse who makes the entail special need not be particularly named. It is sufficient if he or she is defined as belonging to a class (*l*). Where the limitation is to a husband and wife as the donees, the estate tail vests in the husband or wife or both according as the issue are to proceed from one or both (*m*). An estate tail may be created by a limitation to the heirs of the body of a deceased person, the first of such heirs who becomes entitled taking by purchase (*n*); and by a limitation to an only son and the heirs of the body of his father who is then dead, the son taking an estate tail which on his death without issue will go to the next heir of the body of the father (*o*).

Heirs of body of deceased person.

(ii.) *By Statute.*

"In tail."

450. In a deed it is now sufficient, in the limitation of an estate in tail, to use the words "in tail" without the words "heirs of the body"; and, in the limitation of an estate in tail male or in tail female, to use the words "in tail male" or "in tail female," as the

(*k*) Littleton's Tenures, s. 29. A limitation to the "right heirs" of a man by a particular wife "for ever" is the same as a limitation to the heirs of his body by the particular wife, and creates an estate tail, notwithstanding the words "for ever" (*Wright* v. *Vernon* (1854), 2 Drew. 439; affirmed (1858), 7 H. L. Cas. 35).

(*l*) *Page* v. *Hayward* (1704), 2 Salk. 570, more fully reported in Pigott on Recoveries, p. 176 ("devise to Mary Bryant and the heirs male of her body, provided she intermarries with and has issue male by one surnamed Searle"); *Pelham Clinton* v. *Newcastle* (*Duke*), [1902] 1 Ch. 34, C. A.; affirmed, [1903] A. C. 111 (devise to "Charles, if he marries a fit and worthy gentlewoman, and his issue male"). In both cases an estate in special tail male was created; also in *Magee* v. *Martin*, [1902] 1 I. R. 367, 370, C. A. (devise to A., and no person to inherit "unless a lawful issue of a male child got by marriage with a respectable Protestant female, of proper conducted parents").

(*m*) In a limitation to husband and wife and to the heirs whom the husband shall beget on the body of the wife, or to the heirs of the body of the husband and wife, there is no distinction between husband and wife as the source of issue, and the estate in special tail vests in both (Littleton's Tenures, s. 28; *Denn* d. *Trickett* v. *Gillot* (1788), 2 Term Rep. 431; *Williams* v. *Williams* (1810), 12 East, 209). But where the limitation is to husband and wife and the heirs of the body of the husband, the husband has an estate tail general and the wife an estate for life (Littleton's Tenures, s. 26), and where the limitation is to the husband and wife and to the heirs of the husband which he shall beget on the body of the wife, the husband has an estate in special tail and the wife an estate for life (Littleton's Tenures, s. 27); and a limitation to husband and wife and to the heirs of the body of the wife by the husband begotten gives the wife an estate in special tail and the husband an estate for life (Littleton's Tenures, s. 28; *Denn* d. *Trickett* v. *Gillot*, *supra*; *Repps* v. *Bonham* (1608), Yelv. 131; and see *Gossage* v. *Tayler* (1652), Sty. 325; *Throgmorton and Robinson* v. *Wharrey* (1770), 3 Wils. 144). A limitation to A. and his heirs on the body of Jane S. begotten is an estate tail (*Chudleigh's Case* (1595), 1 Co. Rep. 120 a, 140 b, fifth resolution). This had been questioned on the ground that the heirs might be collateral and begotten on the body of Jane S. by another than A., but "begotten" necessarily means begotten by A. (Co. Litt. 26 b).

(*n*) *Mandeville's Case* (undated), Co. Litt. 26 b; *Wright* v. *Vernon* (1854), 2 Drew. 439; affirmed (1858), 7 H. L. Cas. 35.

(*o*) Littleton's Tenures, s. 30.

case requires, without the words "heirs male of the body" or "heirs female of the body" (*p*).

SUB-SECT. 4.—*Disentail.*

(i.) *In General.*

Disentail prior to 1834.

451. By the Statute De Donis (*q*) estates tail, so far as the legislature could effect its intention, were made inalienable. Under the provisions of that statute whatever disposition was made by the donee, the issue in tail could, on his death, defeat the disposition and recover the land. But the tendency of the courts was to favour free alienation (*r*), and, in the course of the next two centuries, they overrode the declared intention of the legislature, and it was established that the tenant in tail by using the fictitious legal process known as a "common recovery," could bar both the issue in tail and the remainders after the estate tail (*s*).

Recoveries.

452. A recovery was a real action brought against the tenant of the freehold. This might be the tenant in tail himself; but more usually there was a preliminary conveyance of an estate of immediate freehold by the tenant in tail to a nominal tenant who was known as the tenant to the præcipe (*t*). Against him the action was brought, and its efficacy depended on the doctrine of warranty (*u*). It was assumed that the estate tail had originally been granted with warrant and the benefit of this warranty would then be available for the issue in tail. The tenant to the præcipe vouched to warrant the tenant in tail, who in turn vouched the common vouchee (*a*). The common vouchee made default. Judgment for recovery of the land was given in favour of the demandant, who thereupon obtained the land in fee simple, while judgment for recovery of lands of equal value was given in favour of the tenant to the præcipe against the tenant in tail, who in turn had the same recompense from the common vouchee. In legal theory this recompense gave to the issue in tail what they lost by the demandant's recovery of the entailed land (*b*). The process was

(*p*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 51; and see Challis, Law of Real Property, 3rd ed., p. 297.

(*q*) Statute of Westminster II. (1285), 13 Edw. 1, c. 1; see pp. 172, 242, *ante*.

(*r*) See pp. 143, 227, note (*c*),, *ante;* and see p. 287, *post*.

(*s*) *Taltarum's Case* (1472), Y. B. 12 Edw. 4, fo. 19, pl. 25; Tudor, L. C. Real Prop., 3rd ed., p. 695; Digby, History of the Law of Real Property, 5th ed., p. 255; Challis, Law of Real Property, 3rd ed., p. 309.

(*t*) Where the land was let for lives at a rent, the lessee was the tenant of the immediate freehold; but to avoid bringing him into the recovery, it was provided by stat. (1740) 14 Geo. 2, c. 20, ss. 1, 2, that the person next in remainder or reversion might make the tenant to the præcipe.

(*u*) As to warranties, which Sir E. COKE refers to as "a curious and cunning kind of learning I assure you" (Co. Litt. 163 b), see Littleton's Tenures, s. 697; Co. Litt. 101 b, 365 a *et seq.*

(*a*) The common vouchee was usually the crier of the court, selected because he was a man of no substance (Challis, Law of Real Property, 3rd ed., p. 311). The courts allowed this transparent fiction in order to make land alienable (see note (*h*), p. 248, *post*), and the procedure came to be sanctioned by the legislature; see note (*t*), *supra*.

(*b*) For a fuller account of the proceedings in a common recovery, and the variations according as the recovery was with single, double or treble voucher, see 2 Bl. Com., p. 358; Challis, Law of Real Property, 3rd ed., pp. 310 *et seq.*; and, for the practice in investigating titles founded on a

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completed by the demandant reconveying to the tenant in tail in fee simple or in such manner as he might direct.

Effect of a recovery.

The effect of a common recovery was to bar the estate tail, and the reversion or remainders, and all conditions and collateral limitations annexed to the estate, including executory interests still *in futuro* taking effect in defeasance of it, and to convert it into a fee simple, if the creator of the estate tail had the fee simple, or otherwise into a fee commensurate with his estate (*c*). The right of the tenant in tail to suffer a recovery was an inseparable incident of his estate which could not be prohibited by condition or any other device (*d*). The recompense in value was recognised to be a fiction, and it was no objection to a recovery that the judgment for the tenant in tail to have lands of equal value produced in fact no recompense (*e*). According to one view, this fictitious recompense was only required for the purpose of making the recovery good as against the issue in tail. The remaindermen were barred by the assumed continuance of the estate tail (*f*). But according to another opinion, more reasonable, though perhaps less technically correct, the remainderman was barred because he was entitled to enjoy the recompense (*g*). In the result, recoveries came to be regarded not as actions, but as common forms of conveyance (*h*); but the recovery did not affect estates derived out of or incumbrances on the estate tail, although incumbrances on the remainder or reversion were barred (*i*).

Fine.

453. An estate tail might also be barred by a fine. This, like a recovery, was in form an action (*j*); but while a recovery was pursued to judgment and took its effect from the judgment, in a fine the proceedings were compromised by leave of the court. The fine was, however, equivalent to judgment, and it operated to bar the issue in tail immediately, and the claims of the remainderman at the expiration of five years from the time when their estates respectively

recovery, see 3 Preston, Abstracts of Titles, 135 *et seq.* For form of judgment in a recovery, see 2 Bl. Com., Appendix v.

(*c*) 1 Preston, Abstracts of Titles, 394; 2 Preston, Abstracts of Titles, 121; Challis, Law of Real Property, 3rd ed., p. 314.

(*d*) *Mildmay's* (*Sir Anthony*) *Case* (1605), 6 Co. Rep. 40 a, 41 a; see *Corbet's Case* (1600), 1 Co. Rep. 83 b; *Portington's* (*Mary*) *Case* (1613), 10 Co. Rep. 35 b; Challis, Law of Real Property, 3rd ed., p. 203.

(*e*) *Portington's* (*Mary*) *Case, supra.*

(*f*) "The recompense in value is the reason of the bar by common recoveries as to the issue in tail; but not the reason why it bars as to him in reversion or remainder; but the reason in this case is because the recoverer in supposition of law is in of the estate tail and that in judgment of law has still continuance" (*Hudson* v. *Benson* (1671), 2 Lev. 28, *per* HALE, C.J., at p. 30; see *Eare* v. *Snow* (1578), Plowd. 514).

(*g*) *Martin* d. *Tregonwell* v. *Strachan* (1743), 5 Term Rep. 107, n.

(*h*) *Dormer's Case* (1593), 5 Co. Rep. 40 a, 40 b; *Martin* d. *Tregonwell* v. *Strachan* (1744), Willes, 445, H. L., *per* WILLES, C.J., at p. 451, in giving the opinion of the judges to the House of Lords: "A common recovery is a conveyance on record, invented to give a tenant in tail an absolute power to dispose of his estate, as if he were tenant in fee simple." The reasons given in the books for the effectiveness of a common recovery are, however, as WILLES, C.J., observed, not consistent, and the real reason was that the courts were resolved to allow to tenants in tail the power of alienation.

(*i*) Preston, Abstracts of Titles, Vol. III., p. 137; *Capel's Case* (1593), 1 Co. Rep. 61 b.

(*j*) As to fines, see 2 Bl. Com. pp. 348 *et seq.*; Challis, Law of Real Property, 3rd ed., p. 304.

fell into possession (*k*). It was necessary that the person who levied the fine should have an estate of freehold (*l*), but not necessarily the immediate freehold (*m*).

Abolition of fines and recoveries.

454. Fines and recoveries were abolished (*n*), as from the 31st December, 1833, with the exception of fines levied or recoveries suffered under proceedings pending at that date, and the present mode of barring entails is defined by statute (*o*).

(ii.) *Statutory Power.*

(a) *In General.*

Effect of statutory disentail.

455. A complete disentailment is effected when land is set free from the claims both of the issue in tail and of estates and interests subsequent to, or in defeasance of, the estate tail. This result follows when the tenant in tail effectually disposes of the land in fee simple. A partial disentailment takes place when the tenant in tail effectually disposes of the land for an estate less than the fee simple, and then the claims of the issue in tail and of the remaindermen are overridden to the extent necessary to give effect to the disposition.

(*k*) Originally the fine had the same effect as a final judgment in a writ of right, that is, it operated immediately as an absolute bar to all claims (Cruise on Fines and Recoveries, Vol. I., p. 159; see Bract., Vol. VI., p. 438, fol. 435 b). Subsequently claims were allowed to be brought both against a judgment on a writ of right, and against a fine, within a year and a day; and a fine was used as a conveyance under which a purchaser's title became safe, after a short time, against every kind of claim (Cruise on Fines and Recoveries, Vol. I., p. 161). This was at common law, but the effect of fines was varied from time to time by statute. Publicity was required by stat. (1290) 18 Edw. 1, stat. 4 (*de modo levandi fines*); but they still had too great an effect against persons ultimately entitled, and the Statute of Non-Claim (1360), 34 Edw. 3, c. 16, confined their operation to the actual parties to the fines. This continued for a hundred years, and then by stat. (1483) 1 Ric. 3, c. 7, and afterwards by the stat. (1489) 4 Hen. 7, c. 24, fines were reintroduced as a means of limiting claims to land. Proclamations had to be made, and the period of limitation was five years. Against future rights the period ran from the time when the right fell into possession; and in case of disability, from the removal of the disability. Thus the rights of remaindermen were saved till they fell into possession. Apparently the fine was an immediate bar to the issue in tail (*Anon.* (1527), Dyer, 3 a), but the point was doubtful, and it was settled against the issue by stat. (1540) 32 Hen. 8, c. 36, s. 1. The stat. (1489) 4 Hen. 7, c. 24, continued to operate as a means of barring estates tail until 1833. As to these statutes, see Challis, Law of Real Property, 3rd ed., pp. 305 *et seq.*

(*l*) A fine was equivalent to a feoffment upon record, provided the person levying the fine had an estate of freehold; otherwise the fine had no effect whatsoever with respect to a stranger, and it operated as an estoppel only, and barred none but the parties to it and those claiming under them (*Smith* d. *Dormer* v. *Packhurst* (1742), 3 Atk. 135, H. L., *per* WILLES, C.J., delivering opinion of judges in House of Lords, at p. 141).

(*m*) Thus the fine of donee in tail with proclamation barred his issue, whether he had an actual or vested estate tail, so that he was seised of the same, or a contingent, future or executory interest in tail (1 Preston, Abstracts of Titles, 402); and, as to fines as a species of assurance, see 3 Preston, Abstracts of Titles, 130 *et seq.* As to the advantage a fine might have over a recovery, see Challis, Law of Real Property, 3rd ed., p. 313.

(*n*) By the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 2.

(*o*) See *ibid.*, s. 3.

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Who can disentail.

456. Every actual tenant in tail (*p*), whether in possession, remainder, contingency, or otherwise, has now, by statute, full power to dispose of the lands entailed for an estate in fee simple absolute, or for any less estate (*q*); and consequently he can effect either a complete or a partial disentailment of the lands, which term, for this purpose, includes hereditaments of any tenure, whether corporeal or incorporeal, and any undivided share therein (*r*). But the power is not exercisable by a tenant in tail after possibility of issue extinct (*s*); or by the tenant in tail of certain lands conferred for public services on the original grantees (*t*). The full power of barring the entail can only be exercised by a tenant in tail of full age in possession. Until he attains the age of twenty-one, he is subject in this respect to the ordinary disability of infancy (*u*); and, while his estate is future, his power depends on the consent of the protector of the settlement (*v*). Without this consent, he can only create a base fee (*w*).

No fetter on right.

As under the previous law, the right to bar the estate is a necessary incident of the estate and cannot be fettered by the settlor (*x*).

(b) *Protector of the Settlement.*

Protector.

457. Where a tenant in tail who proposes to bar the entail is not immediately entitled in possession, the exercise of his power is subject to the consent of the protector of the settlement. The

(*p*) *I.e.*, the tenant of an estate tail which has not been barred; such tenant is deemed an actual tenant in tail, although the estate tail may have been divested or turned to a right (Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 1). Formerly an estate might be turned to a right of entry, in which case the tenant was merely divested of possession and could regain the possession by re-entering or by a possessory action; this was the case where a tenant for life, prior to the estate tail, alienated in fee; but an alienation by tenant in tail had a greater effect; it worked a discontinuance (see 1 Preston, Abstracts of Titles, 364), and deprived the issue in tail of his right of entry, leaving him with the right of property, which he could only assert in a proprietary action (Co. Litt. 327 b; Co. Litt. 239 a, Butler's note (1); see *Goodright* d. *Fowler* v. *Forester* (1809), 1 Taunt. 578, Ex. Ch.; Preston's argument, *ibid.*, pp. 587 *et seq.*). This distinction was abolished by the Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), and a claimant to an estate, as long as he has a right of action, has also a right of entry; and see title LIMITATION OF ACTIONS, Vol. XIX., pp. 104, 105. But in the present connection "divest" includes the case where the tenant in tail has ceased to have both possession and the right of possession; where, for instance, he has alienated the land without barring the issue, so as to pass a base fee, and where his property has been transferred to another person by operation of law. Hence the tenant in tail continues to be actual tenant in tail for the purpose of the statute (1) where he has been ousted by an adverse claimant; (2) where he has alienated in fee not under the statute: (3) where his estate has been transferred by operation of law, as upon its transfer to an administrator on conviction for felony (*Re Gaskell and Walters' Contract*, [1906] 2 Ch. 1, C. A.).

(*q*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 15. As to disposing of the estates tail of bankrupts, see *ibid.*, ss. 56—69; title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 121.

(*r*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 1; compare pp. 156, 157, *ante*.

(*s*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 18; see pp. 174, 175, *ante*: and see p. 260, *post*.

(*t*) See p. 261, *post*.

(*u*) See p. 256, *post*.

(*v*) See the text, *infra*.

(*w*) See p. 262, *post*.

(*x*) *Dawkins* v. *Penrhyn* (*Lord*) (1878), 4 App. Cas. 51, 64. As to the enrolment of the deed, which is necessary in all cases, see p. 256, *post*.

person to hold this office may be appointed by the settlor (*y*); in default of such appointment, he is designated by statute (*z*).

Appointment of protector.

458. The settlor may, by the settlement entailing the lands, appoint any number of persons *in esse* to be protector of the settlement in lieu of the statutory protector, and either for the whole or any part of the period of the statutory protectorate; and he may insert in the settlement a power enabling the donee of the power to fill up vacancies in the office of protector occasioned by death or retirement (*y*). If there is no other person then protector, the persons appointed under the power are protector; otherwise, they are protector jointly with the existing protector; but the number of persons composing the protector must never exceed three (*y*). The appointment of a protector under such a power, and also the retirement of a protector, must be by deed, and the deed is void unless enrolled within six months after execution. The person who would be statutory sole protector may be appointed protector, and, unless otherwise directed by the settlor, may act as sole protector if the other persons constituting the protector shall have died or resigned and no other person shall have been appointed in their place (*y*).

Devolution of protectorate.

459. Where several persons have been appointed protector, then, upon the death of any of them, the office survives, and the survivors constitute the protector until the vacancy is supplied (*a*). Where all the persons constituting the protector die, the office devolves upon the statutory protector (*b*). The court does not favour the special appointment of a protector, and a trustee whose duty it is to make a settlement under the direction of the court in pursuance of an executory trust will not, in the absence of special circumstances, be required to appoint persons as protector (*c*).

Statutory protector.

460. Where no protector is appointed by the settlement, the owner of the first sufficient estate, usually a life estate (*d*), if it

(*y*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 32, which prohibits the appointment of an alien.

(*z*) *Ibid.*, ss. 24—31. As to the statutory protectorate, see the text, *infra*.

(*a*) *Bell* v. *Holtby* (1873), L. R. 15 Eq. 178; and this is so even though the settlor has given power to appoint a new protector "to the intent that the full number of three persons should from time to time fill the office," unless he has clearly excluded the exercise of the powers of protector during a vacancy (*Cohen* v. *Bayley-Worthington*, [1908] A. C. 97).

(*b*) *Clarke* v. *Chamberlin* (1880), 16 Ch. D. 176.

(*c*) *Barker* v. *Le Despencer* (*Baroness*) (1843), 11 Sim. 508, 527.

(*d*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 22. The estates specified as sufficient to confer the office of protector are "any estate for years determinable on the dropping of a life or lives, or any greater estate (not being an estate for years)." The estate specifically mentioned refers to a form of settlement now practically obsolete. The first limitation was frequently to A. for ninety-nine years if he should so long live, followed by a remainder to his first and other sons in tail. A. had thus no estate of freehold, and his concurrence in a recovery was not necessary (Sugden, Real Property Statutes, 2nd ed., p. 215). This form of limitation was adopted in order to keep the land in settlement as long as possible (see *Bell* v. *Holtby*, *supra*, at p. 189). The Fines and

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subsists under the same settlement as the tenancy in tail (*e*), is the protector; but an estate arising by way of resulting use or trust to the settlor is deemed for this purpose to be an estate arising under the same settlement (*f*); and so is an estate by the curtesy in respect of the estate tail, or of any prior estate created by the same settlement (*g*).

Trustee-protector.

461. The prior estate which constitutes the protector is by preference the beneficial estate. If there is a prior legal estate outstanding in a bare trustee, he cannot be protector (*h*). If, however, there is a prior legal or equitable estate in a trustee who is not a bare trustee, and there is no person beneficially entitled in respect of a concurrent prior estate, it seems that the trustee can be protector (*i*); but if there is a person beneficially entitled under a prior estate, he is the protector, notwithstanding that there is a concurrent legal estate in a trustee (*k*).

Heirs, executors and administrators cannot be protectors.

462. An heir, and an executor or administrator, cannot be protector in respect of any estate taken by him as such heir, executor,

Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), made his consent to disentailing necessary. A life estate is greater than an estate for years determinable on life (see p. 219, *ante*), and is within the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 22, and so, *a fortiori*, is a prior estate tail (*Re Blewitt* (1856), 6 De G. M. & G. 187, C. A.). But a lessee at a rent cannot be protector (Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 29).

(*e*) The owner of an estate arising under a different settlement is not protector (*Berrington* v. *Scott* (1875), 32 L. T. 125); but an estate confirmed or restored by a settlement is deemed to subsist thereunder (Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 25).

(*f*) *Ibid.*, s. 22. As to whether, apart from the statute, a resulting use arises under the settlement, see p. 278, *post*; and, for instance of such a use, see *Lynch* v. *Clarkin*, [1900] 1 I. R. 178, C. A.

(*g*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 22. As to estates by the curtesy, see pp. 183 *et seq.*, *ante*. But a doweress cannot be protector (Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 27).

(*h*) *Ibid.*, s. 27; and as to the meaning of "bare trustee," see title TRUSTS AND TRUSTEES. In a settlement created before the passing of the Act (28th August, 1833)—or perhaps before the 31st December, 1833 (see the discrepancy in dates in *ibid.*, ss. 27 and 31, and compare Sugden, Real Property Statutes, 2nd ed., p. 219)—a bare trustee (as to this term, see *Re Cunningham and Frayling*, [1891] 2 Ch. 567; *Re Howgate and Osborn's Contract*, [1902] 1 Ch. 451) can be protector, since formerly, in virtue of his legal estate, he would have been the person to make a tenant to the præcipe (Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 31); see *Smith* d. *Dormer* v. *Packhurst* (1742), 3 Atk. 135, H. L.); but he can insist on retaining the legal estate only so long as the purposes of the trust exist (*Buttanshaw* v. *Martin* (1859), John. 89). Where, however, the prior estate and also the estate tail are equitable, the equitable tenant for life would formerly have been the person to make the tenant to the præcipe in the equitable recovery, and he is now the protector notwithstanding the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 31 (*Re Dudson's Contract* (1878), 8 Ch. D. 628, C. A., *per* COTTON, L.J., at p. 634).

(*i*) See *Re Dudson's Contract*, *supra*, at p. 633; *Re Hughes*, [1906] 2 Ch. 642.

(*k*) Sudgen, Real Property Statutes, 2nd ed., p. 216; *Re Ainslie* (No. 2), *Ainslie* v. *Ainslie* (1884), 54 L. J. (CH.) 8; see *Re Dudson's Contract*, *supra* (where, however, the legal estate was in a mortgagee, and the trustees of the equity of redemption had consequently no interest, the equitable state being in the life tenant beneficially entitled to the rents).

or administrator (*l*); and in such a case the office devolves upon the owner of any other prior estate who, if the estate of the person so excluded did not exist, would be protector (*m*).

Undivided shares.

463. Where the prior estate conferring the office of statutory protector is vested in two or more persons, each of them in respect of the undivided share of which he could dispose is deemed the owner of a prior estate, and is exclusively the protector of the settlement to the extent of such undivided share (*n*).

Married woman protector.

464. Where the prior estate belongs to a married woman, and is settled or agreed to be settled to her separate use, or (as to disentailments made after 1882) is her separate estate by statute (*o*), she is alone protector of the settlement; otherwise she and her husband together constitute the protector and are deemed one owner (*p*).

Persons under disability.

465. If any person who is protector of a settlement is lunatic, idiot, or of unsound mind, whether found such by inquisition or not, the Lord Chancellor is substituted as protector (*q*), and his jurisdiction to consent to a disentail is exercisable by the judge in lunacy (*r*).

In certain other cases of disability the High Court of Justice is substituted as protector. These are (1) where the person who is protector has been convicted of treason or felony; (2) where he is an infant, except where he is the owner of a prior estate under the settlement; (3) if it is uncertain whether he is living or dead; (4) if the settlor has by the settlement excluded the statutory protector and has not made any appointment; and (5) if there is a prior estate under the settlement sufficient to qualify a protector, but in fact there is for the time being no protector (*s*).

(*l*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 27; see Challis, Law of Real Property, 3rd ed., p. 317. Hence an heir who takes in consequence of the failure of a trust for accumulation under the Accumulations Act, 1800 (39 & 40 Geo. 3, c. 98) cannot be protector, notwithstanding that he takes by way of resulting use (compare Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 22; *Re Hughes*, [1906] 2 Ch. 642).

(*m*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 28, which applies also where a doweress, or a bare trustee, is excluded by *ibid.*, s. 27; and, as to the exclusion of a bare trustee, see Sugden, Real Property Statutes, 2nd ed., p. 216.

(*n*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 23. Where the tenant for life of an undivided share is also tenant in tail in remainder of a like share, he is protector in respect of the particular undivided share of which he is tenant in tail, and not of a corresponding aliquot share of the land (*Tufnell* v. *Borrell* (1875), L. R. 20 Eq. 194; compare *Oakley* v. *Smith* (1759), 2 Bro. C. C.; Amb. 368; *Church* v. *Edwards* (1787), 2 Bro. C. C. 180; 3 Preston on Conveyancing, 90).

(*o*) Married Women's Property Act, 1907 (7 Edw. 7, c. 18), s. 3; and see title HUSBAND AND WIFE, Vol. XVI., p. 381.

(*p*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 24; *Keer* v. *Brown* (1859), John. 138.

(*q*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 33.

(*r*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 108, 128; and see title LUNATICS AND PERSONS OF UNSOUND MIND, Vol. XIX., pp. 412, 448, 449.

(*s*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 33. In regard to persons convicted of treason or felony, *ibid.*, s. 33, is incomplete; it refers to this case, but does not expressly provide for it; but the omission

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Powers of Lord Chancellor or court acting as protector.

466. Where the Lord Chancellor or the court is substituted as protector, he or it has power, on the application of the tenant in tail, to consent to a disposition by the tenant in tail, but it must be such as he or it approves (*t*). If the Lord Chancellor or the court is protector jointly with any other person, such other person must consent in the statutory manner (*u*). In giving consent, the court will consider what, with reference to the interests of the family, it would be proper for the tenant for life to do, and will endeavour to protect the objects of the settlement rather than give any benefit to one member of the family to the exclusion of the others (*a*).

Bankruptcy of, or incumbrances by, protector.

467. The owner of the prior estate continues to be protector of the settlement notwithstanding that such estate has been charged or incumbered by him or the settlor or otherwise, or that the whole of the rents and profits are exhausted in payment of charges and incumbrances; and the office of protector remains vested in the original owner of the estate after he has ceased to be entitled to it, whether by absolute disposition, or by bankruptcy or insolvency, or by any other act or default (*b*).

is supplied by implication (*Re Wainewright* (1843), 1 Ph. 258; *Re Gravenor* (1847), 1 De G. & Sm. 700). The provision applies where a married woman, not entitled to her separate use, is protector jointly with her husband and the husband is convicted of felony (Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 33). The reference to infants is intended apparently to make the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), apply where an infant has been specially appointed protector (for this seems to be possible notwithstanding the query in Sugden, Real Property Statutes, p. 206, note (2)), but not where an infant is protector by virtue of his estate: in this case, consent cannot be given; and see title INFANTS AND CHILDREN, Vol. XVII., p. 52.

(*t*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 48.

(*u*) *Ibid.* As to the mode of consent, see p. 257, *post.* In the case of the Lord Chancellor or the court, no further evidence of consent than the order is requisite (Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 49).

(*a*) *Re Newman* (1837), 2 My. & Cr. 112; see *Re Graydon* (1850), 1 Mac. & G. 655; *Re Tharp* (1876), 3 Ch. D. 59, C. A. In these cases consent was refused on the principle stated in the text, *supra;* but it has been given where the object was to advance the son of the lunatic (*Re Yea, Grant* v. *Yea* (1834), 3 My. & K. 245), or to enable the tenant in tail to disentail for the purpose of securing repayment to the estate of the lunatic tenant for life of an allowance out of surplus income, but only so far as to let in the charge (*Re Sparrow* (*a Person of Unsound Mind*) (1882), 20 Ch. D. 320, C. A.; *Re Beridge* (1884), 50 L. T. 653, C. A.), and generally where the arrangement is one which might have been reasonably made by the lunatic (*Re Blewitt* (1856), 6 De G. M. & G. 187, 198, C. A.); and see title LUNATICS AND PERSONS OF UNSOUND MIND, Vol. XIX., pp. 448, 449.

(*b*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 22; see also *ibid.*, s. 27, where an assign is excluded from the office of protector; and see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 145, 146, note (*p*). But where an estate under a settlement was disposed of before the 31st December, 1833, the person who would under the old practice have made the tenant to the præcipe, that is, the owner for the time being of the first estate of freehold (see p. 247, *ante*), was protector under the statute (Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 29; see *Corrall* v. *Cattell* (1839), 4 M. & W. 734; *Cattell* v. *Corrall* (1839), 3 Y. & C. (EX.) 413; 1 Hayes, Introduction to Conveyancing, 177; Sugden, Real Property Statutes, 2nd ed., p. 203, note (2)). Similar provision was made for the case where a tenant for life with a remainder or reversion in fee had before the 31st December, 1833, disposed of both estates. The assignee

(c) *Mode of Disentailment.*

Deed essential.

468. A disposition of lands (*c*) under the statute (*d*) can only be effected by deed, but subject to this it can be effected by any assurance which would be appropriate for making the disposition if the tenant in tail had an estate at law in fee simple absolute (*e*). A mere declaration by deed, and *a fortiori* a disposition by a tenant in tail resting only in contract, either express or implied or otherwise, and whether supported by valuable consideration or not, is of no force at law or in equity under the statute (*d*), notwithstanding that it is made or evidenced by deed (*f*).

Disentail by married woman;

469. Where a married woman is tenant in tail and she has not the powers of a *feme sole* under the Married Women's Property Act,

of the life estate was protector of the settlement, and hence the intermediate estate tail could not be disentailed, and the remainder or reversion barred, without his consent. In the case of such a disposition made since the 31st December, 1833, the assignor remains protector, and can concur to bar the remainder as against his assignee (Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 30; Sugden, Real Property Statutes, 2nd ed., pp. 203, 204).

(*c*) As to the meaning of "lands" for the purpose of the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), see *ibid.*, s. 1; p. 157, *ante*.

(*d*) *I.e.*, the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74).

(*e*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 40; and see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 365. No particular form of disentailing deed is necessary; it is sufficient that the deed would, if the grantor had been seised in fee simple, have passed that estate (*Nelson* v. *Agnew* (1871), 6 I. R. Eq. 232). Hence a declaration of trust is not sufficient (*Green* v. *Paterson* (1886), 32 Ch. D. 95, 108, C. A.; *Carter* v. *Carter*, [1896] 1 Ch. 62, 67, 69). For form of disentailing deed, see Encyclopædia of Forms and Precedents, Vol. V., pp. 434 *et seq.*; and see 1 Hayes, Introduction to Conveyancing, 154. If the deed conveys "unto and to the use of" a trustee, it operates as a grant at common law, and the trustee should execute it (see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 400); otherwise it may be avoided by his disclaimer (see *ibid.*, p. 409; *Peacock* v. *Eastland* (1870), L. R. 10 Eq. 17; see *Savill Brothers, Ltd.* v. *Bethell*, [1902] 2 Ch. 523, 540, C. A.); though in such a case the legal estate might revest in the tenant in tail as an estate in fee simple (see *Mallott* v. *Wilson*, [1903] 2 Ch. 494). Where the deed operates under the Statute of Uses (1535), 27 Hen. 8, c. 10, it is not necessary that the grantee to uses should execute it (*Nelson* v. *Agnew*, *supra*).

(*f*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 40, 47. Similarly, before 1834 the issue in tail was not bound to complete a contract made by his ancestor to bar the entail, since his claim was paramount *per formam doni* (*A.-G.* v. *Day* (1749), 1 Ves. Sen. 218, 224; *Hinton* v. *Hinton* (1755), 2 Ves. Sen. 631, 634; *Frank* v. *Mainwaring* (1839), 2 Beav. 115, 126), notwithstanding that the ancestor had received the purchase-money and a decree had been made against him (*Weale* v. *Lower* (undated), cited in *Fox* v. *Crane* (1693), 2 Vern. 304, 306, and apparently referred to in *Powell* v. *Powell* (1709), Prec. Ch. 278; *A.-G.* v. *Day*, *supra*). An order for specific performance can still be made against the tenant in tail (*Bankes* v. *Small* (1887), 36 Ch. D. 716, C. A.), and he can be required to execute a disentailing deed, provided that this was really contemplated by the contract (*Davis* v. *Tollemache* (1856), 2 Jur. (N. S.) 1181; see *Pryce* v. *Bury* (1853), 2 Drew. 11; and see also title SPECIFIC PERFORMANCE). A married woman who has covenanted to settle after-acquired property is not bound to execute a disentailing deed of an after-acquired estate tail (*Hilbers* v. *Parkinson* (1883), 25 Ch. D. 200, 204; *Re Dunsany's Settlement, Nott* v. *Dunsany*, [1906] 1 Ch. 578, C. A.; see *Dering* v. *Kynaston* (1868), L. R. 6 Eq. 210).

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1882 (*g*), her husband must concur—unless his concurrence is specially dispensed with by the court (*h*)—and the deed must be acknowledged by her (*i*). Where she has such powers in respect of the estate tail this is not necessary (*j*).

infant;

Where an infant is tenant in tail in possession, and a disentailing deed requires to be executed in order to carry out an order of the court, he is declared a trustee within the meaning of the Trustee Act, 1893 (*k*), and a person is appointed to convey on his behalf (*l*). But this is only when, for some special reason, it is necessary to bind the infant's estate, and the court has jurisdiction to do so. Ordinarily, under a strict settlement, no disentail can be effected until the first tenant in tail has attained the age of twenty-one (*m*).

lunatic;

The committee or *quasi*-committee of a lunatic may be authorised by the court to bar the entail of lands of which a lunatic is tenant in tail (*n*). An alien can bar an entail (*o*), and so can a convict (*p*); but a bankrupt's estate can be barred only by his trustee (*q*).

alien; convict; bankrupt.

(d) *Enrolment.*

Enrolment.

470. The disentailing deed must be enrolled (*b*) within six calendar months after execution, otherwise it has no operation under the statute (*c*). The enrolment, even if it takes place after

(*g*) 45 & 46 Vict. c. 75; that is, where she was married before the 1st January, 1883, and her title to the property accrued before that date; see *ibid.*, ss. 1 (1), 2, 5.

(*h*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 91; and see title HUSBAND AND WIFE, Vol. XVI., pp. 384, 386.

(*i*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 40, which applies notwithstanding that the property is settled on the married woman for her separate use (*Cooper* v. *Macdonald* (1877), 7 Ch. D. 288, 295, C. A.). The acknowledgment need not be taken before the deed is enrolled (*Re London Dock Act, Ex parte Taverner* (1855), 7 De G. M. & G. 627, C. A.). As to the persons before whom the deed may be acknowledged, see title HUSBAND AND WIFE, Vol. XVI., pp. 381, 382; SOLICITORS.

(*j*) *Re Drummond and Davie's Contract*, [1891] 1 Ch. 524.

(*k*) 56 & 57 Vict. c. 53; see *ibid.*, ss. 31—33; title INFANTS AND CHILDREN, Vol. XVII., p. 83.

(*l*) *Re Montagu, Faber* v. *Montagu*, [1896] 1 Ch. 549; see *Radcliffe* v. *Eccles* (1836), 1 Keen, 130; *Powell* v. *Matthews* (1855), 1 Jur. (N. S.) 973; title INFANTS AND CHILDREN, Vol. XVII., p. 81, note (*g*). But if the order is made without jurisdiction, the land remains subject to the limitations of the settlement (*Re Hambrough's Estate, Hambrough* v. *Hambrough*, [1909] 2 Ch. 620).

(*m*) See p. 250, *ante*.

(*n*) *Re Pares, Lillingston* v. *Pares* (1879), 12 Ch. D. 333, C. A.; and see title LUNATICS AND PERSONS OF UNSOUND MIND, Vol. XIX., pp. 448, 449.

(*o*) *Anon.* (1589), 4 Leon. 84; 1 Jarman on Wills, 6th ed., p. 59; and see title ALIENS, Vol. I., pp. 306, 307.

(*p*) *Re Gaskell and Walters' Contract*, [1906] 2 Ch. 1, C. A.; and see titles CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 428, 430; PRISONS, Vol. XXIII., pp. 261 *et seq.*

(*q*) See title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 121, note (*h*).

(*b*) R. S. C., Ord. 61, r. 9. The deed is enrolled in the Enrolment Department of the Central Office, Royal Courts of Justice, Strand, London, the original being left there for a copy to be enrolled. After enrolment, a certificate of the fact of enrolment is indorsed on the deed, which is returned to the party leaving it. The fee for enrolment is 1*s.* per folio of 72 words including certificate, but excluding maps and plans. As to the enrolment of disentailing assurances of copyholds, see title COPYHOLDS, Vol. VIII., p. 15.

(*c*) Fines and Recoveries Act, 1833 (3 & 4 Will 4, c. 74), s. 41. As to leases by a tenant in tail which need not be enrolled, see title LANDLORD AND TENANT, Vol. XVIII., p. 360. No rule or practice requiring deeds to

the death of the tenant in tail who executed the deed (*d*), relates back to the date of execution of the deed (*e*) and is effectual, save as against a subsequent purchaser for valuable consideration whose deed is enrolled first (*f*).

(e) *Consent of Protector.*

Consent of protector, when necessary.

471. If at the time when a tenant in tail, who is not entitled to the remainder or reversion in fee immediately expectant on the estate tail, is desirous of disentailing the land there is a protector of the settlement, the consent of the protector is necessary to make the deed effectual to bar the remainders or reversion after the estate tail, but it is not necessary in order to bar the issue in tail or other persons claiming by force of the estate tail (*g*). But if the tenant in tail is himself entitled to the remainder or reversion in fee immediately following the estate tail, this is included in the disposition so far as is necessary to give effect to it without any consent of the protector (*h*).

Discretion of protector.

472. No control or fetter can be imposed on the protector of a settlement in regard to giving his consent, and any agreement by him to withhold his consent is void. He is not a trustee in respect of his power of consent, and in giving or withholding it he is subject to no control of a court of equity (*i*). Nor can any transaction between him and the tenant in tail be impeached on the ground that it is a fraud on the power of consent (*k*).

Time for giving consent.

473. The consent must be given by the disentailing deed, or by a separate deed executed either on or before the date of the making

be acknowledged before enrolment applies to deeds under the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74) (*ibid.*, s. 73). If the disentail is by bargain and sale (see p. 293, *post*), the enrolment takes the place of enrolment under the Inrolment of Bargains and Sales Act (stat. (1536) 27 Hen. 8, c. 16); see the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 41; but such enrolment does not take the place of registration under the statutes relating to registration of deeds (see p. 301, *post*) or to registration of title (see p. 308, *post*).

(*d*) *Whitmore-Searle* v. *Whitmore-Searle*, [1907] 2 Ch. 332; *Re Piers's Estate* (1863), 14 I. Ch. R. 452.

(*e*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 74; *Cattell* v. *Corrall* (1840), 4 Y. & C. (EX.) 228, 236.

(*f*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 74, which provision, however, does not apply to deeds executed by successive tenants in tail (*Re Piers's Estate, supra*).

(*g*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 34. The effect is to make the tenant for life merely a consenting party, and not, as he formerly was, a conveying party. The consent of the tenant for life to the disentailment does not necessarily prevent his assenting to a subsequent exercise of powers under the settlement, such as a power of sale and exchange, which raise uses paramount to the estate tail (*Hill* v. *Pritchard* (1854), Kay, 394).

(*h*) See the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 34.

(*i*) *Ibid.*, s. 36; and the motive which animates the protector is immaterial (*Bankes* v. *Le Despencer* (*Baroness*) (1843), 11 Sim. 508, 527).

(*k*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 37. This reproduces the former law (see *Davis* v. *Uphill* (1818), 1 Swan. 129; *Tweddell* v. *Tweddell* (1822), Turn. & R. 1). As to frauds on powers, see title POWERS, Vol. XXIII., pp. 58 *et seq.*

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of the disentailing deed (*l*). In the latter case, the separate deed must be enrolled at or before the time when the disentailing assurance is enrolled (*m*); and it is treated as an absolute and unqualified consent, unless in such deed of consent the protector refers to the particular disentailing deed and confines his consent to that (*n*). A consent once given is irrevocable (*o*).

(f) *Defects not made Good in Equity.*

Defective disentail.

474. No defects in the execution of the power of disposition given to tenants in tail, or of the power of consent given to protectors, can be made good in equity; nor in any circumstances can the want of execution of such powers of disposition and consent be supplied. When the estates are legal, the disentailment is not effectual unless it is good at law; and when the estates are equitable, all the steps must have been taken which would have been necessary if the estates had been legal (*p*). Hence, attempted dispositions by a tenant in tail, which fail to bar the estate tail under the statute through some defect, cannot be validated upon the principles applicable to defective execution of powers; and contracts to execute disentailing assurances cannot be treated in equity as being equivalent to actual disentailing deeds as against the issue in tail and remaindermen (*q*). But the court is not precluded from enforcing, as against the tenant in tail, a contract entered into by him which requires the estate tail to be barred (*r*); and the statutory prohibition of equitable interference does not extend to rectification, so that a disentailing deed, although completed by enrolment, can be rectified on the ground of mistake (*s*).

(iii.) *Effect.*

Effect as regards— (i.) estates limited after estate tail;

475. When an estate tail has been duly disposed of under the statute for an estate in fee simple, the effect is to defeat entirely the claims both of the issue in tail and of all persons, including the Crown (*t*), whose estates are to take effect after the determination

(*l*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 42; and see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 366. As to dispositions of copyholds, see *ibid.* The execution by the protector of the disentailing deed may be subsequent to the death of the tenant in tail who has executed it (*Whitmore-Searle* v. *Whitmore-Searle*, [1907] 2 Ch. 332). A married woman who is protector, either alone or jointly with her husband, may consent in the same manner as a *feme sole* (Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 45).

(*m*) *Ibid.*, s. 46. As to enrolment, see p. 256, *ante*.

(*n*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 43.

(*o*) *Ibid.*, s. 44.

(*p*) *Ibid.*, s. 47.

(*q*) *Bankes* v. *Small* (1887), 36 Ch. D. 716, 723, C. A.; *Mills* v. *Fox* (1887), 37 Ch. D. 153, 166. As to equity aiding the execution of powers, see title POWERS, Vol. XXIII., pp. 54 *et seq.*

(*r*) *Bankes* v. *Small*, *supra*.

(*s*) *Hall-Dare* v. *Hall-Dare* (1885), 31 Ch. D. 251, C. A.; and see title MISTAKE, Vol. XXI., p. 24. In *Re Ottley's Estate*, [1910] 1 I. R. 1, it was held that the court, without actually rectifying the deed, could treat a limitation to a grantee "in fee" as being an actual disposition in fee simple; but the decision, however convenient, seems to be inconsistent with the strict rules which still govern legal limitations; see pp. 165, 166, *ante*.

(*t*) Where the reversion was in the Crown, a recovery was a bar to the

or in defeasance of the estate tail; but the rights of persons in respect of estates prior to the estate tail are not affected (*u*). A shifting clause which, in a certain event, substitutes C. for B. as tenant in tail in remainder expectant on the death of A., the tenant for life, takes effect in defeasance of, and not in priority to, B.'s estate; hence it is liable to be barred by a disentailing deed executed by B. with A.'s consent (*v*).

(ii.) interest of tenant in tail.

The disposition does not, however, operate to destroy the interest of the tenant in tail; his interest continues, although by virtue of his statutory power he is enabled to make it perpetual (*w*).

The effect of the disentail is commensurate with the estate out of which the estate tail and the remainders were originally derived, and, if this was a determinable fee, the estate arising under the disentail cannot last longer than that fee (*x*).

Dispositions for limited purposes:

476. Where a tenant in tail makes a disposition under the statute by way of mortgage, or for any other limited purpose, its effect in barring the issue in tail and remaindermen depends on whether an estate is created in favour of the grantee and the nature of the estate. The three statutory rules are as follows:—

(1) creating an estate;

(1) If an estate is created, then, unless the estate is within rule (2), the disposition operates, to the extent of that estate, as an absolute bar at law and in equity both to the issue in tail and the remaindermen; and this cannot be prevented by any contrary intention, whether expressed or implied, in the disposition (*a*). Consequently

issue in tail, but apparently not to the Crown (*Anon.* (1536), Dyer, 32 a), though this was not clearly settled (Com. Dig. tit., Estates (B. 31): see *A.-G.* v. *Richmond* (*Duke*) (No. 2), [1907] 2 K. B. 940, 974, and authorities cited in argument, *ibid.*, at pp. 963, 969). The Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 15, expressly bars the Crown.

(*u*) *Ibid.*, s. 15; *Re Skerrett* (1842), 2 Dr. & War. 585.

(*v*) *Milbank* v. *Vane*, [1893] 3 Ch. 79, C. A.; and as to a recovery under the old law, see *Scarborough* (*Earl*) v. *Doe* d. *Savile* (1836), 3 Ad. & El. 2, 897, Ex. Ch. Generally, substituted estates tail will be barred by the disentailing deed if they take effect either after the determination or in defeasance of the original estate tail (*Cardigan* (*Lady*) v. *Curzon Howe*, [1901] 2 Ch. 479, 486). But where a tenant for life joins with the tenant in tail in remainder to bar the entail, and the estate is resettled so as to restore the old life estate, the powers annexed to it take effect in priority to the estate tail and accordingly continue to be exercisable (*Roper* v. *Hallifax* (1817), 8 Taunt. 845; Sugden, Powers, 8th ed., pp. 71, 73; *Hill* v. *Pritchard* (1854), Kay, 394; *Re Wright's Trustees and Marshall* (1884), 28 Ch. D. 93). A power of appointment which is intended to be precedent to the estate tail—*e.g.*, a power to A. to appoint, and in default of, or until appointment, to B. in tail—is apparently not affected by a disentail by B. (Sugden, Real Property Statutes, p. 194).

(*w*) *Lilford* (*Lord*) v. *A.-G.* (1867), L. R. 2 H. L. 63, 70; *Northumberland* (*Duke*) v. *A.-G.*, [1905] A. C. 406, 410.

(*x*) In this respect the disentailing deed has the same effect as a recovery under the former law (see p. 248, *ante*; Challis, Law of Real Property, 3rd ed., p. 316). As to determinable fees, see pp. 170 *et seq.*, *ante*.

(*a*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 21. According to the equitable rule, a mortgage by a donee of a power, or by a husband and wife of the wife's non-separate estate, does not disturb the beneficial title further than is necessary to give effect to the object of the disposition (*Jackson* v. *Innes* (1819), 1 Bli. 104, H. L.; *Plomley* v. *Felton* (1888), 14

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a mortgage in fee simple made by a disposition under the statute operates as a complete disentailing deed, the reservation of the equity of redemption to the tenant in tail giving him an estate free from the claims of the issue in tail and the remaindermen; and if it is intended to preserve these claims, this cannot be done by declaration to that effect, but the equity of redemption must be limited so as to recreate them out of the enlarged estate of the tenant in tail (*b*).

(2) estate *pur autre vie* or for years;

(2) If an estate is created, but this is only an estate *pur autre vie* or for years absolute or determinable, then the disposition, though effectual at law to bar the entail to the extent of the estate, is in equity a bar only so far as is necessary to give full effect to the mortgage or other limited purpose; and this is so notwithstanding any intention to the contrary, expressed or implied, in the deed of disposition (*c*).

(3) creating only an interest or charge.

(3) If an interest, charge, lien, or incumbrance is created without the support of any term of years, absolute or determinable, or any greater estate, then, as under rule (2), the disposition is in equity a bar only so far as is necessary to give full effect to the interest, charge, lien, or incumbrance; and this is so notwithstanding any intention to the contrary, expressed or implied, in the deed of disposition (*d*).

(iv.) *Estates Tail which cannot be Barred.*

Tenant in tail after possibility of issue extinct.

477. A tenant in tail after possibility of issue extinct (*e*) cannot exercise the statutory power of disposition (*f*). He has ceased to have an estate of inheritance, and is for purposes of alienation in the position of tenant for life (*g*); hence he cannot bar the remaindermen.

App. Cas. 61, P. C.). But neither at law nor in equity was the effect of a fine or recovery by a tenant in tail as a bar measured by the declared purpose of the assurance (Hayes, Introduction to Conveyancing, 4th ed., p. 164). The statute excludes the equitable rule (see Sugden, Real Property Statutes, pp. 199, 200; *Plomley* v. *Felton* (1888), 14 App. Cas. 61, P. C.), and makes the estate the measure of the bar, save where the estate is such as to fall within rule (2) (see the text, *supra*).

(*b*) Hayes, Introduction to Conveyancing, 4th ed., p. 165.

(*c*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 21. Where, therefore, the conveyance is to A. for the life of B., or for ninety-nine years if B. shall so long live, or for 1,000 years, and the object is to effect a limited purpose such as a mortgage, the bar operates only to the extent of satisfying that purpose, and the resulting beneficial interest is subject to the entail (Hayes, Introduction to Conveyancing, 4th ed., p. 164). This provision has been used so as to create a mortgage of the estate tail of a lunatic without interfering further than is necessary with the remaindermen (*Re Pares* (1876), 2 Ch. D. 61, C. A.; see *Re Pares, Lillingston* v. *Pares* (1879), 12 Ch. D. 333, C. A.).

(*d*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 21. In this case no estate is created, but it is assumed that the incumbrance is created under the statute; hence there must be an enrolled deed, and it has been pointed out that the case is not likely to occur (Hayes, Introduction to Conveyancing, 4th ed., p. 165). As regards the creation of a lien, it does not appear how this can occur.

(*e*) See pp. 174, 175, *ante*.

(*f*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 18.

(*g*) Co. Litt. 28 a; *Bowles' (Lewis) Case* (1615), 11 Co. Rep. 79 b, 80 b;

478. An estate tail which has been granted by the Crown in consideration of money or services, the reversion remaining in the Crown, cannot be barred (*h*). In certain cases where estates have been granted for eminent services, or where family arrangements are confirmed by Parliament, holders of the estates who are tenants in tail are forbidden by statute to bar the entail (*i*). In such cases the statutory power (*j*) of disposition is excluded.

Estates granted by the Crown.

Estates limited by private Act.

and see p. 175, *ante*. Women who were, at the passing of the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), tenants in tail *ex provisione viri* within stat. (1495) 11 Hen. 7, c. 20 (repealed by the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 16), were restrained from disentailing, except with the consent required by stat. (1495) 11 Hen. 7, c. 20, for a fine or recovery (Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 16; see Carson's Real Property Statutes, 11th ed., p. 277). The Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), does not enable the issue in tail to dispose of his expectant interest; see *ibid.*, s. 20.

(*h*) Stat. (1543) 34 & 35 Hen. 8, c. 20. After a preamble reciting that the Crown had given or granted or otherwise provided hereditaments for subjects for estates tail in order that the recompense for services might extend to the heirs in tail, and that questions had arisen whether feigned recoveries of such hereditaments, whereof the reversion or remainder was in the Crown at the time of recovery, should bind the heirs in tail, this statute provides that no such feigned recovery by assent of the parties against any such tenant in tail of hereditaments, whereof the reversion or remainder at the time of the recovery shall be in the Crown, shall bind the heirs in tail. The effect of the preamble is to confine the statute to cases where the grant is in consideration of services (Co. Litt. 372 b; *Perkins* d. *Vowe* v. *Sewell* (1768), 1 Wm. Bl. 654; see *Wiseman's Case* (1585), 2 Co. Rep. 15 a); consequently, in the absence of consideration, the statute does not prevent the tenant in tail from barring the entail (*Grafton* (*Duke*) v. *London and Birmingham Rail. Co.* (1838), 5 Bing. (N. C.) 27); but, provided the grant is not on the face of it voluntary, consideration will be presumed at a distance of time (*Perkins* d. *Vowe* v. *Sewell, supra*; *Robinson* v. *Giffard*, [1903] 1 Ch. 865); and the statute extends to cases where, in consideration of services rendered, the Crown procures a third person to grant the estate tail, limiting the remainder to the Crown. This assumes that the Crown purchases the fee simple with a view to the estate tail being granted (Co. Litt. 372 b (sixth point); and see, generally, as to the statute, Co. Litt. 372 b, 373 a; and notes to *Perkins* d. *Vowe* v. *Sewell, supra*; Carson's Real Property Statutes, 11th ed., p. 278). All cases to which this statute applies are excepted from the statutory power of disposition under the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74); see s. 18.

(*i*) As to the Marlborough estates, see stat. (1706) 6 Anne, c. 6, s. 5; stat. (1706) 6 Anne, c. 7, s. 4; *Davis* v. *Marlborough* (*Duke*) (1818), 1 Swan. 74; *Osborn* v. *Marlborough* (*Duke*) (1866), 14 W. R. 886; *Re Marlborough's* (*Duke*) *Blenheim Estates* (1892), 8 T. L. R. 582; as to the Bolton estates, see stat. (1535—6), 27 Hen. 8, Private Act, 16; *Re Bolton Estates, Russell* v. *Meyrick*, [1903] 2 Ch. 461, C. A.; *Re Bolton Estates Act*, 1863, [1904] 2 Ch. 289; as to the Abergavenny estates, see stat. (1555) 2 & 3 Phil. & Mar., Private Act, 2; *Abergavenny* (*Earl*) v. *Brace* (1872), L. R. 7 Exch. 145; as to the Shrewsbury estates, see stat. (1719) 6 Geo. 1, Private Act, 29; stat. (1803) 43 Geo. 3, c. xl.; as to the Abercrombie and Hutchinson annuities, see stat. (1801) 41 Geo. 3, c. 59, s. 6; stat. (1802) 42 Geo. 3, c. 113, s. 6; as to the Wellington annuity and estates, see stat. (1814) 54 Geo. 3, c. 161, s. 28. Where purchased lands are required to be brought within the restraint on alienation, the purchase must be *bonâ fide* (*Howard* v. *Shrewsbury* (*Earl*) (1867), 2 Ch. App. 760).

(*j*) *I.e.*, under the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74);

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Estates Tail.

(v.) *Base Fees.*

Nature of estate.

479. A base fee is a fee which is limited in duration and admits of an absolute fee existing by way of remainder upon it; but during its continuance it is descendible, like an absolute fee, to the heirs general (*k*). It cannot be created by limitation, but arises from a disposition by a tenant in tail, which, though purporting to create an absolute fee, is ineffectual to bar either the remainders only, or both the issue in tail and the remainders (*l*).

Creation by ineffectual statutory disposition.

480. Where, at the time when a tenant in tail makes a disposition in fee simple under the statute, there is a protector of the settlement, and the consent of the protector is not given in accordance with the statute, the effect of the disposition is to bar the issue in tail but not the remainders, and thereby to create in favour of the grantee a base fee (*m*). This base fee continues as long as there are issue in tail who would have inherited under the entail if they had not been barred, but on failure of such issue the base fee determines and the next estate in remainder takes effect in possession.

Power to enlarge to fee simple absolute.

481. After the tenant in tail has created a base fee he has power to dispose of the lands by assurance under the statute as against all persons, including the Crown, whose estates are to take effect after the determination or in defeasance of the base fee, and, if he does so, the base fee is thereby enlarged into a fee simple absolute (*n*);

see p. 250, *ante*. To exclude the statutory power of disposition the restraint imposed by the private Act must be clear. A restraint will not be implied because the object of the Act appears to forbid a power of alienation (*A.-G.* v. *Richmond* (*Duke*) (No. 2), [1907] 2 K. B. 940, 981). A tenant in tail who cannot bar the entail can exercise the powers of a tenant for life under the Settled Land Acts (see title SETTLEMENTS), save where the land was purchased with money provided by Parliament in consideration of public services (Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 58 (1) (i.), (iii.), (vii.)). As to the exception, see *Re Marlborough's* (*Duke*) *Blenheim Estates* (1892), 8 T. L. R. 582. As to estate Bills, generally, see title PARLIAMENT, Vol. XXI., pp. 759, 760.

(*k*) See *Seymor's Case* (1612), 10 Co. Rep. 95 b, 97 b, 98 a; Co. Litt. 18; *Walsingham's Case* (1579), 2 Plowd. 547, Ex. Ch. "A base fee is where A. has a good and absolute estate of fee simple in land, and B. has another estate of fee in the same land, which shall descend from heir to heir, but which is base in respect of the fee of A., as being younger than the fee of A., and not of absolute perpetuity as the fee of A. is" (*ibid.*, at p. 557; see Challis, Law of Real Property, 3rd ed., p. 325).

(*l*) For a list of possible base fees both under the old and the present law, see Challis, Law of Real Property, 3rd ed., pp. 326—330.

(*m*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 34. For the purposes of the statute, the expression "base fee" means exclusively the estate in fee simple into which an estate tail is converted where the issue in tail are barred, but persons claiming by way of remainder or otherwise are not barred (*ibid.*, s. 1).

(*n*) *Ibid.*, s. 19. The tenant in tail can exercise this power notwithstanding that he has conveyed the base fee to a purchaser, and a covenant by him to do so can be specifically enforced against him (*Bankes* v. *Small* (1887), 36 Ch. D. 716, C. A.). In the event of the tenant in tail refusing to execute the deed it seems that a vesting order may be made under the Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 31 (*Re Montagu, Faber* v. *Montagu*, [1896] 1 Ch. 549; see title TRUSTS AND TRUSTEES); or, perhaps, a person may be appointed to execute the deed under the Judicature Act,

but so long as there is a protector of the settlement, he cannot exercise the power without the consent of the protector (*o*).

Enlargement by union of estates.

482. If a base fee in lands and the remainder or reversion in fee in the same lands become united in the same person, and there is no intermediate estate between them, the base fee is not merged, but is thereupon enlarged into as large an estate as the tenant in tail could have created under the statute, with the consent of the protector, if any, if the remainder or reversion had been vested in any other person; that is, the base fee is usually enlarged into a fee simple absolute (*p*). Hence the subsequent title to the fee simple is a continuation of the title to the estate tail, and not of the title to the reversion or remainder (*q*).

Creation of base fee by non-statutory disposition.

483. A base fee of a somewhat different character is also created where a tenant in tail purports to convey the whole of his estate by an assurance not made under the statute. The estate of the assignee is only effectual during the life of the tenant in tail, but he does not, on that account, take only an estate *pur autre vie*; he takes an estate of inheritance, which, however, is liable to be determined after the death of the tenant in tail by the entry of the heir in tail (*r*).

Effect of statutory disposition upon voidable estate created by tenant in tail.

484. If a tenant in tail creates a voidable estate in favour of a purchaser for valuable consideration, and subsequently makes a disposition of the lands under the statute with the consent of the protector, if any, this latter disposition, whatever may be its object,

1884 (47 & 48 Vict. c. 61), s. 14; but see Challis, Law of Real Property, 3rd ed., p. 338. Where the tenant in tail is a married woman who has married since the 31st December, 1882 (see Married Women's Property Act, 1882 (45 & 46 Vict. c. 75)), the deed enlarging the base fee does not require acknowledgment or the concurrence of the husband under the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 40 (*Re Drummond and Davie's Contract*, [1891] 1 Ch. 524; see title HUSBAND AND WIFE, Vol. XVI., p. 381). As to the power of a trustee in bankruptcy to enlarge a base fee vested in the former tenant in tail who has become bankrupt, see Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 57, 58, 60, 61; title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 121. As to the enlargement of a base fee into a fee simple under the Statutes of Limitation, see the Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 6; title LIMITATION OF ACTIONS, Vol. XIX., p. 136.

(*o*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 35.

(*p*) *Ibid.*, s. 39.

(*q*) Under the old law a fine resulted in merger and let in incumbrances on the reversion (*Shelburne* (*Earl*) v. *Biddulph* (1748), 6 Bro. Parl. Cas. 356); a recovery enlarged the estate tail into a fee simple, and shut out incumbrances on the reversion. The statute adopts the latter course (Hayes, Introduction to Conveyancing, 4th ed., p. 168).

(*r*) *Machil* v. *Clark* (1702), 2 Salk. 619; *Goodright* d. *Tyrell* v. *Mead and Shilson* (1765), 3 Burr. 1703, 1705; *Doe* d. *Neville* v. *Rivers* (1797), 7 Term Rep. 276; *Doe* d. *Gregory* v. *Whichelo* (1799), 8 Term Rep. 211; *Sturgis* v. *Morse* (1860), 2 De G. F. & J. 223, 231, C. A; *Hankey* v. *Martin* (1883), 49 L. T. 560; see *Stone* v. *Newman* (1635), Cro. Car. 427, 429; *Stapilton* v. *Stapilton* (1739), 1 Atk. 2, 8. This appears to be settled, but Littleton speaks of the assurance by tenant in tail as giving only an estate for the life of the tenant in tail, whether the assurance was by deed with livery of seisin (Littleton's Tenures, ss. 613, 650), or by grant only (Littleton's Tenures, ss. 668, 617); see *Fines* (*Case of*) (1602), 3 Co. Rep. 84 a, 84 b., and *ibid.*, note (c).

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and whatever may be the extent of the estate thereby intended to be created, has the effect of confirming the voidable estate to its full extent, except as against persons having claims prior to the estate tail; and, if there is a protector and he does not consent, the voidable estate is confirmed to the extent of the base fee which the tenant in tail could create without such consent. If, however, the statutory disposition is made to a subsequent purchaser for valuable consideration, who has not express notice of the voidable estate, the voidable estate is not confirmed against him and his successors in title (*s*).

SUB-SECT. 5.—*Devolution on Death.*

Devolution upon heir in tail.

485. A tenant in tail has no power of testamentary disposition over the estate, and if he has not executed a disentailing deed, it devolves upon his death on the heir in tail designated by the nature of the estate. The heir is ascertained in accordance with the rules for ascertaining the heir general so far as these are consistent with the form of the limitation (*t*). The estate devolves immediately on the heir in tail, and does not vest in the first instance in the legal personal representatives of the deceased tenant in tail (*a*).

SECT. 2.—*Estates for Years.*

SUB-SECT. 1.—*Nature of the Estate.*

Statutory origin.

486. At common law an interest for a term of years did not originally confer an estate in the land. Between lessor and lessee there was only a relation of contract, with the result that, if the lessee was evicted, his remedy was to recover compensation from the lessor, and though it was afterwards held that he could recover the land itself, the interest in the land which he thereby acquired was liable to be defeated by a collusive recovery suffered by the lessor. This liability was partially removed by the Statute of

(*s*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 38. The proviso to *ibid.*, s. 38, introduced a change in the former law under which the subsequent disentail necessarily confirmed a previous voidable assurance (*Capel's Case* (1593), 1 Co. Rep. 61 b; and see the cases cited in Carson's Real Property Statutes, 2nd ed., p. 294). Under the proviso, the rights of subsequent purchasers for valuable consideration without notice are preserved. The disposition referred to in the proviso need not be contained solely in the enrolled deed. The term covers that and all other instruments by which the arrangement with the purchaser is carried out (*Crocker* v. *Waine* (1864), 5 B. & S. 697; and as to the previous law, see *ibid.*, *per* BLACKBURN, J., at pp. 718, 719). A disentailing assurance by the tenant in tail operates to confirm the voidable estate, notwithstanding his intermediate bankruptcy, if there have been no dealings by his trustee in bankruptcy inconsistent with this result (*Hankey* v. *Martin* (1883), 49 L. T. 560).

(*t*) See title DESCENT AND DISTRIBUTION, Vol. XI., p. 12.

(*a*) See Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1. The term "real estate" used in *ibid.*, s. 1, is wide enough to include estates tail, but the effect of the provision is limited by the words "notwithstanding any testamentary disposition" (see titles DESCENT AND DISTRIBUTION, Vol. XI., pp. 4, note (*n*), 12, note (*c*); EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 238.)

Gloucester (*b*), and more completely by a later statute (*c*). The estate in the land which the termor thenceforward enjoyed is therefore in effect the creation of statute (*d*).

Essentials: (1) term; (2) entry.

487. It is essential to the creation of a term of years that it should have a fixed beginning and a fixed ending (*e*), though, since the term does not confer an estate of freehold, it can be made to commence at a future date (*f*). To complete the estate of the termor, actual entry is necessary; until entry he has only an *interesse termini* (*g*), and when he has entered his possession is concurrent with and supports the seisin of the person entitled to the immediate freehold (*h*). Consequently a limitation for a term of years, and subject thereto to an existing grantee for an estate of freehold, does not place the freehold in abeyance, but vests it immediately in the grantee (*i*).

Terms of years and mortgage and settlement terms distinguished.

488. Terms of years were created originally either under contracts of tenancy or contracts of mortgage (*k*). When they had come to confer an estate in the land, they were created also to serve the purposes of settlements (*l*). Theoretically the nature of the interest which they confer is the same, whatever is their object. Actually, however, the nature is quite distinct. Under a tenancy term the termor or lessee pays rent to the lessor; a mortgage or settlement term is intended to give the termor an interest in the ownership, and to enable him, if necessary, to receive the rent from the tenant. Tenancy terms may be either short occupation terms—twenty-one years or less—or longer terms for mining or building purposes, the length, in general, not exceeding ninety-nine years in the latter case, with shorter terms in mining leases; mortgage and settlement terms are for long periods—200 years or more—but they have usually served their purpose and ceased to exist before their natural expiration. Mortgage terms may be either terms created by the freeholder, this form of mortgage being now confined to a few special cases (*m*), or mortgages of terms created for raising portions and the like, or terms created by way of sub-demise of leasehold property (*n*).

(*b*) Stat. (1278) 6 Edw. 1, c. 11.

(*c*) Stat. (1529) 21 Hen. 8, c. 15; repealed by the Statute Law Revision Act, 1863 (26 & 27 Vict. c. 125). As to the effect of these statutes, see Co. Litt. 46 a; and as to the origin of leasehold interests, see pp. 146, 147, *ante*.

(*d*) See Challis, Law of Real Property, 3rd ed., p. 64.

(*e*) See title LANDLORD AND TENANT, Vol. XVIII., p. 456.

(*f*) See *ibid.*, p. 457; and see p. 216, *ante*.

(*g*) See title LANDLORD AND TENANT, Vol. XVIII., p. 404.

(*h*) See pp. 215, 218, 219, *ante*.

(*i*) See pp. 218, 219, *ante*.

(*k*) See p. 147, *ante*; 2 Bl. Com. 141.

(*l*) 2 Bl. Com. 142.

(*m*) Thus, mortgages of university and college estates are required to be by demise (Universities and Colleges Estates Act, 1858 (21 & 22 Vict. c. 44), s. 27). This is not altered by the Universities and College Estates Act, 1898 (61 & 62 Vict. c. 55); and see title LANDLORD AND TENANT, Vol. XVIII., p. 366. For a form, see Davidson, Conveyancing, 4th ed., Vol. II., Part II., p 645; and as to a mortgage by demise for a long term by a tenant for life, see Encyclopædia of Forms and Precedents, Vol. XVI., p. 403.

(*n*) See title MORTGAGE, Vol. XXI., p. 126; Encyclopædia of Forms and Precedents, Vol. VIII., p. 627.

SECT. 2. Estates for Years.

Personal estate.

489. A term of years is personal estate, and, if it devolves upon death, necessarily passes to the executors and administrators of the lessee, and not to his heirs; and this is so notwithstanding that the term is expressly limited to the termor and his heirs (*o*).

Limitation to persons in succession.

490. Moreover, at law, the term cannot by assurance *inter vivos* be limited to persons in succession; an assignment of the term vests the entire term in the assignee, notwithstanding that it purports to be made to the assignee for his life only (*p*); nor can successive interests be created *inter vivos* by executory assurances, since the Statute of Uses (*q*) does not apply to leasehold interests (*r*). But, in equity, successive interests in chattels real are recognised, and, if the legal term is vested in trustees, trusts of the term can be effectually declared in favour of persons in succession (*s*). Such interests can also be created by will without the intervention of trustees, since the doctrine of executory devises applies to chattels real as well as to freehold property (*t*). Hence, upon a devise of leaseholds to one for life with remainder to another person, the remainder is well disposed of and takes effect by way of executory devise (*u*); and this is so also where the devise over is in favour of a person not *in esse* or ascertained at the date of the will or of the death of the testator (*a*). The union of the life interest in the term and the freehold reversion does not effect a merger so as to destroy the executory interest in the term (*b*).

Estates tail inapplicable.

But the rule that a term may be limited by way of trust,

(*o*) Littleton's Tenures, s. 740; and see titles EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 230; LANDLORD AND TENANT, Vol. XVIII., pp. 598, 599.

(*p*) This follows from the consideration that at law personal property is regarded as the subject not of estates, but of absolute ownership only; hence, whatever limitation is placed on an assignment of a chattel real—*e.g.*, an assignment of a term to A. for life—the absolute interest passes (2 Preston, Abstracts of Titles, 5). But a lease may be granted originally to A. for years, if he so long lives, and then to B., since B.'s remainder takes effect as a future lease (*Wright* d. *Plowden* v. *Cartwright* (1757), 1 Burr. 282); and see titles LANDLORD AND TENANT, Vol. XVIII., p. 460, note (*i*); PERSONAL PROPERTY, Vol. XXII., p. 413.

(*q*) Stat. (1535) 27 Hen. 8, c. 10.

(*r*) See p. 274, *post*.

(*s*) See title SETTLEMENTS.

(*t*) See p. 232 *ante*; Fearne, Contingent Remainders, pp. 386, 401; 2 Preston, Abstracts of Titles, 4, 5; and see title PERSONAL PROPERTY, Vol. XXII., p. 413. As to the application of the rule against perpetuities, see title PERPETUITIES, Vol. XXII., p. 313. As to executory bequests of chattels personal, see Fearne, Contingent Remainders, pp. 407—404.

(*u*) *Manning's Case* (1609), 8 Co. Rep. 94 b; *Lampet's Case* (1612), 10 Co. Rep. 46 b; *Johns* v. *Pink*, [1900] 1 Ch. 296, 305; see 1 Eq. Cas. Abr. 191, pl. 1, n.; and, as to such executory devises, see p. 234, *ante*.

(*a*) *Cotton* v. *Heath* (1638), 1 Eq. Cas. Abr. 191, pl. 2; see Fearne, Contingent Remainders, pp. 402—404. There was formerly a distinction between the bequest of the use of a chattel real for life with remainder over, which was good, and a similar bequest of the term itself in which the remainder was void; but this has long been obsolete (Fearne, Contingent Remainders, p 402). As to the application of the rule against perpetuities, see title PERPETUITIES, Vol. XXII., pp. 313, 335, 336.

(*b*) See Fearne, Contingent Remainders, pp. 421, 422, referring to *Hannington* v. *Rudyard* (1586), cited 10 Co. Rep. 52 a.

or of executory bequest to persons in succession is subject to the further rule that an interest analogous to an estate tail cannot be created in chattels real. Hence any words which, whether by express limitation or by implication, would create an estate tail in freeholds give an absolute interest in chattels real (*c*). The donee may accordingly dispose of them as he pleases, and, if he does not dispose of them they go to his executors and not to his issue (*d*).

Rule in *Shelley's Case*.

Further, though the rule in *Shelley's Case* (*e*) does not in strictness apply to chattels real (*f*), yet the analogy of the rule is so far followed that a gift to A. for life, and after his death to the heirs of his body, vests in him the absolute interest (*g*). But if there are

(*c*) *Leventhorpe* v. *Ashbie* (1635), 1 Roll. Abr. 831, pl. 1; Tudor, L. C. Real Prop., 4th ed., p. 832; *Seale* v. *Seale* (1715), 1 P. Wms. 291; *Pelham* (*Lady C.*) v. *Gregory* (1760), 3 Bro. Parl. Cas. 204; *Doncaster* v. *Doncaster* (1856), 3 K. & J. 26; *Tyrone* (*Earl*) v. *Waterford* (*Marquis*) (1860), 1 De G. F. & J. 613, 625, C. A. Thus, a devise of a term to one and his offspring gives the absolute interest (*Young* v. *Davies* (1863), 2 Drew. & Sm. 167). Hence leaseholds directed to be settled as nearly as possible in accordance with a strict settlement of realty cannot be settled beyond the first tenant in tail (*Fordyce* v. *Ford* (1795), 2 Ves. 536, 539; *Re Johnson's Trusts* (1866), L. R. 2 Eq. 716); and see title PERSONAL PROPERTY, Vol. XXII., p. 414. Formerly the doctrine did not apply where the words of the devise would, as to freeholds, create an estate tail by implication only—*e.g.*, where, before the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), there was a devise over after failure of issue of the first devisee (*Atkinson* v. *Hutchinson* (1734), 3 P. Wms. 258; *Doe* d. *Lyde* v. *Lyde* (1787), 1 Term Rep. 593, 596; and, as to such limitations, see note (*h*), p. 245, *ante*; *Knight* v. *Ellis* (1789), 2 Bro. C. C. 570, 578); but it was settled that it applied both to express and implied limitations (*Simmons* v. *Simmons* (1836), 8 Sim. 22; *Ex parte Wynch* (1854), 5 De G. M. & G. 188, 208, C. A.; *Webster* v. *Parr* (1858), 26 Beav. 236; *Re Andrew's Will* (1859), 27 Beav. 608). In this case a devise over after failure of issue was void, but if the failure of issue was restricted to the time of the death of the first devisee, the implication corresponding to an estate tail did not arise; the first devisee (unless the limitation was to him for life only) took absolutely in the first instance, but subject to a valid executory devise over if he died without leaving issue (*Campbell* v. *Harding* (1831), 2 Russ. & M. 390, 401). Under the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 29, failure of issue is restricted to failure at the death of the ancestor, and an implied estate tail in freeholds, or absolute interest in personalty, cannot thus arise, but *ibid.*, s. 29, does not apply to a gift over on failure of "heirs of the body," and to this case the old rule applies (*Re Sallery* (1861), 11 I. Ch. R. 236); and see Jarman on Wills, 6th ed., p. 1204). As to successive limitations of personal estate, where the first legatee does not survive the testator, see *Re Lowman, Devenish* v. *Pester*, [1895] 2 Ch. 348, C. A.; and see, generally, title WILLS; and, as to the effect of the rule against perpetuities, see title PERPETUITIES, VOL. XXII., pp. 347 *et seq.*, 350, note (*a*).

(*d*) Fearne, Contingent Remainders, p. 461.

(*e*) See p. 226, *ante*.

(*f*) *Re Jeaffreson's Trusts* (1866), L. R. 2 Eq. 276, 281; *Herrick* v. *Franklin* (1868), L. R. 6 Eq. 593.

(*g*) *Garth* v. *Baldwin* (1755), 2 Ves. Sen. 646, 661; *Tothill* v. *Pitt* (1766), 1 Madd. 488; S. C. on appeal, *Chatham* (*Earl*) v. *Tothill* (1771), 7 Bro. Parl. Cas. 453; *Harvey* v. *Towell* (1847), 7 Hare, 231; *Lewis* v. *Hopkins* (1856), 3 Drew. 668; S. C. on appeal, *Williams* v. *Lewis* (1859), 6 H. L. Cas. 1013. In *Comfort* v. *Brown* (1878), 10 Ch. D. 146, 151, this was treated as an actual application of the rule in *Shelley's Case*; and see title PERSONAL PROPERTY, Vol. XXII, pp. 414, note (*l*), 415. It is the same where the first devise is of the profits of the land for life (*Butterfield* v. *Butterfield* (1748), 1 Ves. Sen. 154). The result is not prevented by the life estate

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indications in the settlement or will that the words "heirs of the body" are not words of limitation, but designate a particular person or persons, the donee takes for life only, and the persons so designated take by purchase (*h*); and, if, with like indications, the gift is to one for life and then to his issue, the result is the same, and the issue take as purchasers (*i*).

Rules governing limitations.

491. The executory devise of a term and the limitation of the trusts of a term are governed by the same rules (*k*); and, if real and personal property are devised by the same words, these rules are followed as to the personal estate, although the consequence is that the limitations of the personal estate may have to be construed differently from those of real estate (*l*).

SUB-SECT. 2.—*Enlargement of Long Terms.*

Nature of terms capable of being enlarged.

492. In certain cases the residue of a long term, whether the immediate reversion is the freehold or not (*m*), may be enlarged into a fee simple. For this purpose the following conditions must be satisfied (*n*):—

(1) The term as orginally created must have been for not less than 300 years.

(2) The unexpired residue must be for not less than 200 years, but this may subsist either in the whole or only part of the land comprised in the original term.

(3) There must be no trust or right of redemption affecting the term in favour of the freeholder or other reversioner.

(4) Either there must be no rent at all or merely a nominal rent—that is, a peppercorn or other rent having no money value (*o*)—

being given to a married woman for her separate use (*Verulam* (*Earl*) v. *Bathurst* (1843), 13 Sim. 374).

(*h*) See *Hodgeson* v. *Bussey* (1740), 2 Atk. 89; Fearne, Contingent Remainders, p. 495. The test is whether "heirs of the body" or other words, such as "sons" or "children," are to include all the heirs or sons successively or not; if all are included, the words define the interest of the first taker (*Ex parte Wynch* (1854), 5 De G. M. & G. 188, 208, C. A.; *Tyrone* (*Earl*) v. *Waterford* (*Marquis*) (1860), 1 De G. F. & J. 613, C. A. ("children in succession"); *Comfort* v. *Brown* (1878), 10 Ch. D. 146 ("sons successively in tail")). But it may appear from the will—*e.g.*, from a discretionary power of maintaining the heirs of the body—that there is a co-existing set of persons, and then the statutory next of kin descended from the first devisee may take as purchasers (see *Pattenden* v. *Hobson* (1853), 17 Jur. 406; *Re Jeaffreson's Trusts* (1866), L. R. 2 Eq. 276); similarly when there is a direction for division (*Symers* v. *Jobson* (1848), 16 Sim. 267); and, where the context shows that the line of descent contemplated is incompatible with an estate tail, the limitations will give a life interest only to the first devisee (*Dodds* v. *Dodds* (1860), 11 I. Ch. R. 374, C. A.).

(*i*) *Knight* v. *Ellis* (1789), 2 Bro. C. C. 570; *Ex parte Wynch*, *supra*, at p. 209; *Re Andrew's Will* (1859), 27 Beav. 608.

(*k*) Fearne, Contingent Remainders, p. 470.

(*l*) *Jackson* v. *Calvert* (1860), 1 John. & H. 235; *Herrick* v. *Franklin* 1868), L. R. 6 Eq. 593, disapproving of *Dunk* v. *Fenner* (1831), 2 Russ. & M. 557; and see *Bennett* v. *Bennett* (1864), 2 Drew. & Sm. 266.

(*m*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 11.

(*n*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 65. The statute applies to terms subsisting at or after the 1st January. 1882 (*ibid.*, s. 65).

(*o*) A rent of 3*s*. (*Re Smith and Stott* (1883), 29 Ch. D. 1009, n.), or,

incident to the reversion; or if there was a rent other than nominal, it must have been released, or barred by lapse of time, or in some other way have ceased to be payable (*p*).

(5) The term must not be either a term liable to be determined by re-entry for condition broken, or a term created by sub-demise out of a superior term itself incapable of being enlarged into a fee simple (*q*).

By whom power to enlarge may be exercised.

493. The power to enlarge the term into a fee simple can be exercised by any of the following persons in respect of the land to which he is entitled, whether he is entitled subject to incumbrances or not (*r*):—

(1) Any person beneficially entitled in right of the term to possession of any land comprised in the term;

(2) Any person in receipt of income as trustee, in right of the term, or holding the term in trust for sale;

(3) A personal representative in whom the term is vested.

How exercised. Effect of exercise.

494. The power is exercised by the execution of a deed containing a declaration that from and after execution the term shall be enlarged into a fee simple. Thereupon the term is enlarged accordingly, and the person in whom the term was previously vested has a fee simple in the land instead of the term (*s*); but this estate in fee simple is subject to the same trusts, powers, executory limitations over, rights and equities, and to the same covenants and provisions as to user, and the same obligations, as the term would have been subject to if not enlarged (*t*). Such estate includes the fee simple in all mines and minerals which, at the time of

apparently, 1*s*. (*Blaiberg* v. *Keeves*, [1906] 2 Ch. 175), is a rent having a money value; but not a rent of "one silver penny, if lawfully demanded" (*Re Chapman and Hobbs* (1885), 29 Ch. D. 1007, where importance was attached to the words "if lawfully demanded").

(*p*) The reference to rents being barred by lapse of time appears to be a mistake. So long as the term subsists mere non-payment does not extinguish the rent; this can always be recovered with six years' arrears (*Grant* v. *Ellis* (1841), 9 M. & W. 113; *Archbold* v. *Scully* (1861), 9 H. L. Cas. 360; see title LIMITATION OF ACTIONS, Vol. XIX., pp. 127, 128); but a release may be presumed from non-payment for a length of time (see *Lefroy* v. *Walsh* (1851), 1 I. C. L. R. 311; *Tennent* v. *Neil* (1870), 5 I. R. C. L. 418, Ex. Ch.; *Blaiberg* v. *Keeves*, *supra*).

(*q*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 11.

(*r*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 65 (2).

(*s*) *Ibid.*, s. 65 (2), (3). It is presumed that this fee simple extinguishes the previous reversion in fee simple which existed in the land; and where the enlarged term is a sub-term it extinguishes both the leasehold and the freehold reversion; but it has been suggested that the statutory fee simple is only a base fee, and that the original fee simple subsists by way of remainder upon it (Challis, Law of Real Property, 3rd ed., p 333). Such a base fee could only determine by failure of heirs general, and either the original fee simple would fall into possession, or there would be an escheat to the lord, according as the fee simple exists as a base fee or not.

(*t*) These covenants may, it seems, be either imposed on the creation of the term as between landlord and tenant, or be imposed on a subsequent assignment of the term as between vendor and purchaser, or otherwise. In the former case the suggested preservation of the original fee simple (see note (*s*), *supra*), might be important, since the tenant of such fee simple would be the person to enforce the covenants which are preserved by the statute (see Challis, Law of Real Property, 3rd ed., p. 334).

SECT. 2. **Estates for Years.**

enlargement, have not been severed in right, or in fact, or under an Inclosure Act or award, from the surface (*u*).

Limitations of estate so enlarged.

495. Where the land has been settled according to the same limitations as freehold land so far as the law permits, and no person has become absolutely entitled to the term (*x*), the fee simple acquired by enlargement of the term follows the freehold limitations; but without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term (*a*).

SUB-SECT. 3.—*Satisfied Terms.*

Nature and purpose of long terms.

496. Long terms of years are created for the purpose of securing the payment of money; usually in connection with the provision of jointure rentcharges and portions under settlements (*b*). The owner of the estate for the time being usually keeps down the jointure rentcharges out of the income of the estate, and pays off the portions by himself raising money on the estate or from other sources. But, if he fails to do so, the trustees in whom the terms are vested can enter into possession of the estate and themselves pay the rentcharges out of income or raise the portions by mortgage or sale of the term. In general it is not necessary to sell the term, and in due course the purposes for which it was created are satisfied (*c*); but formerly this did not necessarily mean that the term comes to an end. Provision for determination of the term may be made by a clause of cesser in the settlement, or the term may be intentionally destroyed by merger—that is, by the surrender of the term to the freehold reversioner (*c*). But under the old practice a term, after it had satisfied its original purpose, might be useful as a protection against incumbrances, and accordingly it was kept on foot with this object and, upon a sale of land, the purchaser had it assigned to a trustee for himself. Thereupon it became attendant on the inheritance, and in the event of any subsequent incumbrances being asserted, it might be set up to defeat them (*d*). Further, although the term was not assigned to a trustee to attend the inheritance, it was treated, so long as it did not merge, as being attendant on the inheritance for the benefit of all parties entitled, according to their respective estates and interests (*e*). A term not attendant on the inheritance was a term in gross (*f*).

(*u*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 65 (6).

(*x*) See p. 266, *ante*.

(*a*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 65 (5).

(*b*) See title SETTLEMENTS.

(*c*) See, further, title LANDLORD AND TENANT, Vol. XVIII., pp. 552, 553.

(*d*) See the Real Property Commissioners' 2nd Report, pp. 7 *et seq.*; Williams, Real Property, 21st ed., pp. 533 *et seq.*; Sugden, Vendors and Purchasers, 14th ed., ch. 16, pp. 615 *et seq.*

(*e*) See Sugden, Vendors and Purchasers, p. 625. "In regard to terms attendant by implication, it is a general rule, that whenever a term would merge in the inheritance, if united, it shall attend, if in a different person without an express declaration, by implication of law founded on the Statute of Frauds"—that is, by virtue of an implied trust which may arise notwithstanding that statute (*Scott* v. *Fenhoulett* (1779), 1 Bro. C. C. 69).

(*f*) *Scott* v. *Fenhoullett*, *supra*.

Statutory extinction of satisfied terms.

497. The continued existence of satisfied terms is now prevented by statute (*g*). Every term of years becoming satisfied after the 31st December, 1845 (*h*), which, either by express declaration or by construction of law (*i*), becomes attendant upon the inheritance, thereupon absolutely ceases as to the land affected. But a term is not satisfied within the meaning of this provision so long as there remains any useful purpose beneficial to the owner of the term and consistent with the trust on which, at the date of the transaction, the term was held (*k*); and, though a mere attendant term is merged, it is not so if the termor has made it a security for money, and by the mortgage deed clothed it with an active trust in favour of the mortgagee (*l*). Where the term and the reversion would merge, the owner can still, by expressing his intention to that effect, keep the term alive as personal estate so that it will pass under a testamentary gift of all the owner's personal property (*m*).

SECT. 3.—*Estates Arising under the Statute of Uses.*

Uses prior to the Statute of Uses.

498. Prior to the Statute of Uses (*n*) a division was possible between the legal estate in land and the use (*o*) in land, and the

(*g*) Satisfied Terms Act, 1845 (8 & 9 Vict. c. 112). The Act extends to freehold tenements and hereditaments, whether corporeal or incorporeal; and to customary lands which pass by deed, or deed and admittance, but not by surrender (*ibid.*, s. 3); but it does not apply to mortgage sub-terms (*Re Moore and Hulm's Contract*, [1912] 2 Ch. 105).

(*h*) As regards terms which on the 31st December, 1845, were already attendant on the inheritance, the Satisfied Terms Act, 1845 (8 & 9 Vict. c. 112), provided that they should cease; but that, where attendant by express declaration, they should afford the same protection against incumbrances as if they had continued to exist after the 31st December, 1845. As to the effect of this reservation, see *Re Sleeman* (1855), 4 I. Ch. R. 563, P. C.; *Corry* v. *Cremorne* (1861), 12 I. Ch. R. 136. Where the term was not required for the protection of a purchaser it determined (*Doe* d. *Cadwalader* v. *Price* (1847), 16 M. & W. 603, 608, 614; *Doe* d. *Hall* v. *Moulsdale* (1847), 16 M. & W. 689); and, as to the protection thus afforded, see *Cottrell* v. *Hughes* (1855), 15 C. B. 532; *Plant* v. *Taylor* (1861), 7 H. & N. 211, 235.

(*i*) As to the presumption of surrender of attendant terms, see *Garrard* v. *Tuck* (1849), 8 C. B. 231; *Cottrell* v. *Hughes*, *supra*; *Doe* d. *Blackwell* v. *Plowman* (1831), 2 B. & Ad. 573; *Doe* d. *Egremont* (*Lord*) v. *Langdon* (1848), 12 Q. B. 711; *Hele* v. *Bexley* (*Lord*) (1853), 17 Beav. 14, 28.

(*k*) *Anderson* v. *Pignet* (1872), 8 Ch. App. 180, *per* Lord SELBORNE, L.C., at p. 188: "The term does not become satisfied within the meaning of the Act of Parliament except the beneficial interest in the whole charge secured by the term and the beneficial interest in the whole estate are united and merged in the same person" (*ibid.*, *per* JAMES, L. J., at p. 189). A term expressly assigned in trust for parties supposed, by mistake, to be entitled to the inheritance is not extinguished by the statute; in such a case it is not attendant either by express declaration or by construction of law (*Doe* d. *Clay* v. *Jones* (1849), 13 Q. B. 774).

(*l*) *Shaw* v. *Johnson* (1861), 1 Drew. & Sm. 412, 416; see *Anderson* v. *Pignet*, *supra*.

(*m*) *Belaney* v. *Belaney* (1867), 2 Ch. App. 138; and see title MORTGAGE, Vol. XXI., pp. 318 *et seq.*

(*n*) (1535) 27 Hen. 8, c. 10; see Jenks, Short History of English Law, pp. 95 *et seq.*

(*o*) Not the Latin "*usus*," but "*opus*," derived through the Norman-French "*oes*" or "*oeps*"; see Challis, Law of Real Property, 3rd ed., p. 385, n.

SECT. 3. **Estates Arising under the Statute of Uses.**

use was defined to be a trust or confidence not issuing out of the land, but a thing collateral, annexed in privity to the estate and the person of the legal owner, and touching the land; the effect of the use being that the *cestui que use* should take the profits and that the legal owner should convey according to his directions (*p*).

(*p*) *Chudleigh's Case* (1595), 1 Co. Rep. 120 a, 121 b; Co. Litt. 272 b; 1 Sanders, Uses and Trusts, 4th ed., p. 2; Sugden's Gilbert on Uses and Trusts, 3rd ed., p. 1. As to the early history of uses, see *Brent's Case* (1575), 2 Leon. 14, *per* MANWOOD, J., at p. 15; Co. Litt. 191 a, Butler's note vi. 11; Leake, Law of Property in Land, 2nd ed.. pp. 78 *et seq.*; title EQUITY, Vol. XIII., pp. 88, 89. They were introduced for the purpose of avoiding the incidents of legal estates, such as the inability of religious houses to accept gifts of land, the liability to forfeiture for treason, and the notoriety of conveyance, and also for defeating creditors. The facility they afforded for evading the Statutes of Mortmain (as to mortmain, see title CORPORATIONS, Vol. VIII., pp. 367 *et seq.*) was abolished by stat. (1391) 15 Ric. 2, c. 5, which enacted that uses should for the future be subject to those statutes, and be forfeitable like lands (1 Sanders, Uses and Trusts, 4th ed., p. 17; see *Brent's Case, supra, per* DYER, C.J., at p. 17). Forfeiture for treason was a common incident during the civil wars of the fifteenth century (*Brent's Case, supra, per* HARPER, J., at p. 16); and to some extent the liability to forfeiture was extended by statute to uses (*Brent's Case, supra*, at p. 19); and attempts were made to check the disposition of lands to uses in fraud of creditors (stat. (1376—7) 50 Edw. 3, c. 6; stat. (1377) 1 Ric. 2, c. 9; stat. (1402) 4 Hen. 4, c. 7; stat. (1433) 11 Hen. 6, c. 3). By stat. (1433) 11 Hen. 6, c. 3, the *cestui que use* for life or years was made liable for voluntary waste. But while the *cestui que use* was thus in various respects made subject to the liabilities of the legal owner, the legislature also intervened to give him the power of alienation, and by stat. (1483—4) 1 Ric. 3, c. 1, conveyances by *cestui que use* were made valid against the *cestui que use* and his heirs, and also against the feoffee to uses (see Challis, Law of Real Property, 3rd ed., p. 386); but the statute did not validate such conveyances against previous conveyances made by the feoffee to uses, and its effect was to introduce conflicts between purchasers under feoffees to uses and those under the *cestuis que use* (1 Sanders, Uses and Trusts, 4th ed., p. 23; Sugden's Gilbert on Uses and Trusts, p. 51); moreover, the statute did not extend to uses of estates tail, or for life, or of terms of years (1 Sanders, Uses and Trusts, 4th ed., pp. 30 *et seq.*). This restriction continued to be of importance as regards terms of years, inasmuch as the Statute of Uses, 27 Hen. 8, c. 10) applied only where an estate of freehold was vested in the feoffees to uses, and, if the stat. (1483—4) 1 Ric. 3, c. 1, had applied to uses of terms of years, it would have remained operative as to these after the Statute of Uses (1 Sanders, Uses and Trusts, 4th ed., pp. 32—45; Sugden's Gilbert on Uses and Trusts, p. 34, note (2)). Since, however, stat. (1483—4) 1 Ric. 3, c. 1, did not apply to terms of years, and uses declared on all other estates are turned into the legal estate by the Statute of Uses (27 Hen. 8, c. 10), the earlier statute, though not repealed until 1863, became inoperative (1 Sanders, Uses and Trusts, 4th ed., p. 45). For other statutes affecting uses prior to the Statute of Uses (27 Hen. 8, c. 10), see 1 Sanders, Uses and Trusts, 4th ed., pp. 15—55. For the raising and continuing of such uses four things were necessary (*ibid.*, pp. 56 *et seq.*): (1) a person capable of being seised to a use; this required that the legal owner for the time being should be privy in estate to the original feoffee to uses, and privy to the confidence reposed in that feoffee; consequently a grantee from him for good consideration without notice was not seised to the use (*Brent's Case, supra, per* DYER, C.J., at p. 19; *Chudleigh's Case* (1595), 1 Co. Rep. 120 a, 122 a; see title EQUITY, Vol. XIII., p. 89); (2) a person capable of taking the use; as to this it was the rule that all persons capable of taking a conveyance of lands might take the same by way of use

The person seised of the land was complete owner of the land at law (*q*), and the use was only cognisable in equity, the use before the Statute of Uses (*r*) being the same as a trust after the Statute of Uses (*s*).

The Statute of Uses.

499. The Statute of Uses (*t*) (in this section frequently referred to as "the statute"), which was passed in order to put an end to this division between the legal and beneficial interest in land and to join the legal estate in the land to the use (*u*), provides (*v*)

(see *Brent's Case* (1575), 2 Leon. 14, 17); and possibly also aliens (1 Sanders. Uses and Trusts, 4th ed., p. 60): but this was denied (Sugden's Gilbert on Uses and Trusts, p. 43); (3) either a consideration to raise, or a declaration of, the use; see *ibid.*, pp. 45 *et seq.*; an express declaration of the use made on the occasion of a feoffment did not depend for its effect on the presence or absence of a pecuniary consideration; but where there was no express declaration, the use, if a pecuniary consideration was paid by the feoffee, went to him; otherwise it resulted to the feoffor, who thereupon was in of his old use (1 Sanders, Uses and Trusts, 4th ed., p. 61); this applied also to grants of existing incorporeal hereditaments; but on a grant of a rentcharge newly created, though without declaration of use or payment of consideration, no use resulted; (4) a real hereditament in respect of which the use could arise, for personal hereditaments, such as annuities, were not the subject of uses (1 Sanders, Uses and Trusts, 4th ed., p. 63).

(*q*) 1 Sanders, Uses and Trusts, 4th ed., p. 68; Leake, Law of Property in Land, 2nd ed., p. 79; and see title EQUITY, Vol. XIII., pp. 88, 89. The legal estate in the feoffees to uses supported contingent uses, notwithstanding that there was no preceding estate of freehold in the use (*Chudleigh's Case* (1595), 1 Co. Rep. 120 a, 135 a). But uses could not, before the Statute of Uses (27 Hen. 8, c. 10), be imposed on the estates of limited owners, whether in tail, or for life, or for years (1 Sanders, Uses and Trusts, 4th ed., pp. 30 *et seq.*)

(*r*) 27 Hen. 8, c. 10.

(*s*) 27 Hen. 8, c. 10. As to the exclusive jurisdiction of the Court of Chancery over uses, see 1 Sanders, Uses and Trusts, 4th ed., pp. 5, 20; Leake, Law of Property in Land, 2nd ed., p. 79; *Burgess* v. *Wheate*, *A.-G.* v. *Wheate* (1759), 1 Eden, 177, *per* Lord MANSFIELD, C.J., at pp. 218, 219. A *cestui que use*, it was said, had neither *jus in re* nor *jus ad rem*, that is, neither any estate in the land, nor title to the same, but only a confidence or trust for which he had no remedy at the common law, but only by subpœna in Chancery (*Chudleigh's Case*, *supra*, at p. 121 b; 1 Sanders, Uses and Trusts, 4th ed., p. 66); but such an interest was at an early date treated as an estate in the land (*Brent's Case*, *supra*, *per* DYER, C.J., at p. 17). Uses were inheritable according to the rules of the common law, and were devisable, although, after the Conquest, land was not devisable at law till made so by the Statutes of Wills (1540), 32 Hen. 8, c. 1; (1542—3), 34 & 35 Hen. 8, c. 5 (*Chudleigh's Case*, *supra*, at p. 123 b; 1 Sanders, Uses and Trusts, 4th ed., pp. 64, 65); and in equity the *cestui que use* could transfer the use, and at length, under stat. (1483-4) 1 Ric. 3, c. 1 (see note (*p*), p. 272, *ante*), could convey the legal estate.

(*t*) 27 Hen. 8, c. 10, which statute has been rightly called "the keystone of all modern conveyancing" (Williams, Seisin of the Freehold, p. 137).

(*u*) The King, it was said, being displeased for the loss of wardships and other injuries done—though stat. (1488—9) 4 & 5 Hen. 7. c. 17, had attached the incidents of wardship and relief to uses of lands held by knight service—complained to the judges, who told him that if the possession might be joined to the use all would go well (*Brent's Case*, *supra*, *per* HARPER, J., at p. 17); and as to the intention of the Statute of Uses (27 Hen. 8, c. 10), see, further, *ibid.*, preamble; *Chudleigh's Case*, *supra*, at p. 124 a.

(*v*) Statute of Uses (27 Hen. 8, c. 10), s. 1; see Williams, Seisin of the Freehold, p. 137; Leake, Law of Property in Land, 2nd ed., p. 81.

SECT. 3. Estates Arising under the Statute of Uses.

that where any person or persons (*x*) are seised of any hereditaments (*a*) to the use, confidence, or trust of any other person or persons, or of any body politic, by reason of any agreement, conveyance, or will (*b*), then every and all such person and persons and bodies politic that have any such use, confidence, or trust in fee simple, fee tail, or for term of life or for years, or otherwise, or in remainder or reverter, shall be deemed in lawful seisin, estate, and possession of the same hereditaments to all intents for the like estates as they have in use, trust, or confidence in the same; and that the estate (*c*) of a person or persons seised of any lands, tenements, or hereditaments to the use, confidence, and trust of any such person or persons, or of any body politic, shall be deemed to be in him or them that have such use, confidence, or trust in manner corresponding to the use, confidence or trust (*d*). Where several persons are jointly seised to the use, confidence, or trust of any of themselves, the person or persons that have the use, confidence, or trust are deemed to have in him or them the estate, possession, and seisin in manner corresponding to the use, confidence, or trust (*e*). The statute does not affect persons who are seised to their own use (*f*).

Conditions essential to the operation of the Statute of Uses: (1) seisin to uses;

500. In order that the statute may operate the following conditions must be satisfied:—

(1) There must be a person seised to a use or trust (*g*). Consequently there must be an estate of freehold (*h*) limited to the grantee to uses, and the statute does not apply where the grantee takes only a term of years (*i*), though the use may be limited for a

(*x*) The omission here of "body politic," and its inclusion subsequently (see the text, *infra*), shows that a corporation cannot be seised to a use (see title CORPORATIONS, Vol. VIII., p. 373), though it can take the benefit of a use. It is well settled, however, that it can be seised in trust; see Challis, Law of Real Property, 3rd ed., p. 388.

(*a*) The full words are, "honours, castles, manors, lands, tenements, rents, services, reversions, remainders, or other hereditaments." Copyholds are not within the Statute of Uses (27 Hen. 8, c. 10) (1 Sanders, Uses and Trusts, 4th ed., p. 241; title COPYHOLDS, Vol. VIII., p. 91; *Baker* v. *White* (1875), L. R. 20 Eq. 166); nor are personal hereditaments (Sugden's Gilbert on Uses and Trusts, p. 485; see p. 162, *ante*). In a devise of freeholds and copyholds (*Baker* v. *White, supra*), or freeholds and chattels personal together (*Re Brooke, Brooke* v. *Brooke*, [1894] 1 Ch. 43), the statute may apply to the freeholds only. As to the application of the statute to wills, see note (*b*), *infra*; note (*d*), p. 281, *post*.

(*b*) The full words are, "by reason of any bargain, sale, feoffment, fine, recovery, covenant, contract, agreement, will or otherwise." Wills, it is presumed, were included because a custom to devise existed in certain places, though the power of testamentary disposition was not general.

(*c*) In full, "the estate, title, right and possession."

(*d*) Statute of Uses (27 Hen. 8, c. 10), s. 1.

(*e*) *Ibid.*, s. 2.

(*f*) *Ibid.*, s. 3; see p. 275, *post*.

(*g*) 1 Sanders, Uses and Trusts, 4th ed., p. 87.

(*h*) Compare note (*p*), p. 272, *ante*.

(*i*) *Anon.* (1580), Dyer, 369 a; 1 Sanders, Uses and Trusts, 4th ed., pp. 89, 263. It seems that a grantee in tail or for life may be seised to the use of another within the statute (*ibid.*, p. 89; *Seymor's Case* (1612), 10 Co. Rep. 95 b; but see Sugden's Gilbert on Uses and Trusts, p. 19), and if no use is declared the tenure between grantor and

term (*k*). A grant of a vested remainder carries a sufficient seisin for uses declared of the remainder to be executed by the statute (*l*).

(2) *cestui que use;*

(2) There must be a *cestui que use*, and the *cestui que use* must be different from the grantee to uses. Hence a conveyance made unto and to the use of the grantee and his heirs operates at common law, and not under the statute, to vest the legal estate in the grantee (*m*); but the express declaration of the use to the grantee prevents a further use being raised in favour of any other person (*n*). Where the uses are split up into successive estates, and the use of one of them is declared in favour of the grantee to uses, the above rule in general applies, and the grantee takes his use at the common law and not under the statute. This is so where the grant is to one in fee to the use of himself for life or years, with remainders over in the use. The grantee takes his estate for life or years at the common law, and the remainders are executed by the statute (*o*). But the rule is departed from when special considerations of convenience or other circumstances require it; where, for instance, the uses are carved out into many estates, and the grantee's own

grantee (see p. 144, *ante*) may be a sufficient consideration to prevent a resulting use to the grantor (*Brent's Case* (1575), 2 Leon. 14, 16; 1 Sanders, Uses and Trusts, 4th ed., p. 10; Leake, Law of Property in Land, 2nd ed., p. 84).

(*k*) See *Heyward's Case* (1595), 2 Co. Rep. 35 a; Sugden's Gilbert on Uses and Trusts, p. 182.

(*l*) 1 Sanders, Uses and Trusts, 4th ed., p. 107; *Haggerston* v. *Hanbury* (1826), 5 B. & C. 101.

(*m*) *Samme's Case* (1609), 13 Co. Rep. 54, 56; *Gwam* v. *Roe* (1693), 1 Salk. 90; *Altham (Lord)* v. *Anglesey (Earl)* (1709), Gilb. (CH.) 16, 17; *Long* v. *Buckeridge* (1718), 1 Stra. 106; *Doe* d. *Lloyd* v. *Passingham* (1827), 6 B. & C. 305; *Orme's Case* (1872), L. R. 8 C. P. 281; *Savill Brothers, Ltd.* v. *Bethell*, [1902] 2 Ch. 523, C. A.; 1 Sanders, Uses and Trusts, 4th ed., pp. 91, 156. In a fine, no use resulted on want of consideration, and the words "and to the use of," were superfluous; and they were superfluous, too, in a feoffment made upon consideration; but, in a feoffment without consideration, they excluded a resulting trust, and they have the same effect in a conveyance without consideration at the present day. The grantor may himself be a *cestui que use*, and conveyances to uses might formerly be resorted to in order to enable the grantor to take a new estate in the use as a purchaser. He might thus take a limited estate —for life, for years, or in tail—and his heirs in tail, if they alone were mentioned, might take the use by purchase, but not his heirs general. Under a limitation of the use to the heirs general of the grantor, he himself took as of his old estate (*Fennick* v. *Mitford* (1589), 1 Leon. 182; Co. Litt. 22 a; 1 Sanders, Uses and Trusts, 4th ed., pp. 131 *et seq.*); but now, under such a limitation, he is entitled by purchase (Inheritance Act, 1833 (3 & 4 Will. 4, c. 106), s. 3; see title DESCENT AND DISTRIBUTION, Vol. XI., p. 8; and see p. 214, *ante*).

(*n*) Although the grantee takes at the common law, and the use is to that extent ineffective, yet the use has been in fact declared, and this prevents any further declaration of use which can take effect under the statute (*Tipping* v. *Cosins* (1695), Comb. 312; 1 Sanders, Uses and Trusts, 4th ed., p. 92; and see *Doe* d. *Lloyd* v. *Passingham, supra; Cooper* v. *Kynock* (1872), 7 Ch. App. 398). Moreover, the use thus declared can be displaced by a subsequent use limited as a shifting use; see Leake, Law of Property in Land, 2nd ed., p. 94, and authorities there cited.

(*o*) *Samme's Case, supra; Doe* d. *Hutchinson* v. *Prestwidge* (1815), 4 M. & S. 178; *Orme's Case, supra.*

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use is in the midst of them, such as an estate for life placed between other estates, or where the use in favour of the grantee is an estate tail. In these cases the use is executed by the statute—in the former case, on grounds of convenience; in the latter case, because the issue in tail are interested (*p*).

(3) use;

(3) There must be a use, express or implied, actually created to take effect either immediately or in the future (*q*). When it is express it must be in writing (*r*), and it may be declared by the statutory words "use," "confidence," or "trust" (*s*), or by any other words showing an intention that the lands shall be held for the use of, or in trust for, another (*t*). When no use is expressly declared, a use results to the grantor according to his original estate if the conveyance is without consideration (*a*), and it results to

(*p*) *Samme's Case* (1609), 13 Co. Rep. 54; 1 Sanders, Uses and Trusts, 4th ed., p. 95 (where some other exceptions to the rule are mentioned). The exceptions have been based on the ground of "a direct impossibility or impertinency for the use to take effect by the common law" (Bacon, Reading upon the Statute of Uses, p. 63; see Challis, Law of Real Property, 3rd ed., p. 390.

(*q*) 1 Sanders, Uses and Trusts, 4th ed., p. 97. The declaration of the uses must be certain, and that especially in three things—in the persons in whom, in the lands of which, and in the estates by which, the uses are declared (Shep. Touch., 6th ed., p. 519). As to the construction of declarations of uses, see 1 Sanders, Uses and Trusts, 4th ed., p. 229; but in general this is according to the ordinary rules of construction (see title DEEDS AND OTHER INSTRUMENTS, Vol. X., pp. 443 *et seq.*).

(*r*) By virtue of the Statute of Frauds (29 Car. 2, c. 3), s. 7; see title DEEDS AND OTHER INSTRUMENTS, Vol. X., pp. 374, 422, 428, note (*l*); 1 Sanders, Uses and Trusts, 4th ed., p. 210; but the declaration may be by separate deed (*ibid.*, p. 211; Sugden's Gilbert on Uses and Trusts, p. 104, note (7)), though this is not the case in practice. A use arising or resulting by implication or construction of law is excepted from the Statute of Frauds (29 Car. 2, c. 3) (*ibid.*, s. 8).

(*s*) The common law makes no distinction between trusts and confidences, and uses (*Altham* (*Lord*) v. *Anglesey* (*Earl*) (1709), Gilb. (CH.) 16, 17), and all these words express the same idea. A conveyance to A. in fee in trust for B. in fee vests the legal estate in B. as much as if the words were "to the use of" (*Broughton* v. *Langley* (1703), 2 Salk. 679; *Eure* v. *Howard* (1712), Prec. Ch. 338, 345; *Right* d. *Phillipps* v. *Smith* (1810), 12 East, 455, 461; *Doe* d. *Leicester* v. *Biggs* (1809), 2 Taunt. 109; 1 Sanders, Uses and Trusts, 4th ed., p. 97).

(*t*) *Hammerston's Case* (1575), cited Dyer, 166 a, note (9); *Bettuan's Case* (1576), 4 Leon. 22; 1 Sanders, Uses and Trusts, 4th ed., p. 98; Sugden's Gilbert on Uses and Trusts, p. 139, note (1). But a special trust, *i.e.*, a trust imposing active duties on the grantee, does not operate as a use so as to vest the legal estate under the statute (1 Sanders, Uses and Trusts, 4th ed., p. 244). For the statute to operate, the *cestui que trust* must be entitled to possession or receipt of rents and profits, and to direct the disposal of the land (*Symson* v. *Turner* (1700), 1 Eq. Cas. Abr. 383; *White* v. *Parker* (1835), 1 Bing. (N. C.) 593). Under a limitation, however, by deed "unto and to the use of" trustees, the legal estate is vested by the statute in the trustees whatever be the nature of the trust (*Cooper* v. *Kynock* (1872), 7 Ch. App. 398); and, as to the estate taken by trustees under devises, see titles TRUSTS AND TRUSTEES; WILLS.

(*a*) 1 Sanders, Uses and Trusts, 4th ed., p. 100; *Beckwith's Case* (1589), 2 Co. Rep. 56 b, 58 a, note (t); *Clere's Case* (1599), 6 Co. Rep. 17 b; *Armstrong* d. *Neve* v. *Wolsey* (1755), 2 Wils. 19; *Doe* d. *Dyke* v. *Whittingham* (1811), 4 Taunt. 20. The amount of the consideration is

several conveying parties according to their respective interests in the old use (*b*); but in the case of a conveyance by a tenant in tail barring his estate tail, the use results to him in fee simple (*c*). Similarly, if only part of the use which the grantor is enabled to declare is disposed of, the part undisposed of results to him (*d*), unless the part disposed of is limited to himself, for example, to himself for life; for, in the latter case, if the remainder resulted to him, the life estate would merge and the express limitation would be defeated. In this case the remainder vests in the grantee (*e*).

(4) property.

(4) The property of which the use is declared must be actually the property of the person creating the use at that time; the use cannot be created in property to be after-acquired (*f*).

Declaration of use exhausts Statute of Uses.

501. The effect of the statute is exhausted by the first declaration of the use; the legal estate is executed in the *cestui que use* under that use, and any further limitation of the use takes effect by way of trust. Thus, a limitation to A. and his heirs to the use of B. and his heirs in trust for C. vests the legal fee simple in B. in trust for C. (*g*).

immaterial. The insertion of a nominal amount is sufficient to show an intention that no use shall result (*Sutton's Hospital Case* (1612), 10 Co. Rep. 23 a; *Barker* v. *Keate* (1680), 2 Vent. 35; *Shortridge* v. *Lamplugh* (1702), 2 Ld. Raym. 798); hence the former insertion in deeds of a consideration of 5*s*. The consideration need not be pecuniary. In covenants to stand seised the consideration was affection for a wife, child, or some blood relation (see *Mildmay's Case* (1584), 1 Co. Rep. 175 a; *Bedell's Case* (1607), 7 Co. Rep. 40 a).

(*b*) 1 Sanders, Uses and Trusts, 4th ed., p. 101; Sugden's Gilbert on Uses and Trusts, pp. 89 *et seq.*

(*c*) *Dowman's Case* (1586), 9 Co. Rep. 7 b, 8 b (*arguendo*); *Martin* d. *Tregonwell* v. *Strachan* (1743), 5 Term Rep. 107, n., 110, n.; *Tanner* v. *Radford* (1833), 6 Sim. 21, 30; see *Nightingale* v. *Ferrers* (*Earl*) (1733), 3 P. Wms. 206; 1 Sanders, Uses and Trusts, 4th ed., p. 102.

(*d*) When one seised of land "makes a feoffment in fee without valuable consideration to divers particular uses, so much of the use, as he disposeth not, is in him as his ancient use in point of reverter" (Co. Litt. 23 a; and see *ibid.*, p. 271 b; 1 Sanders, Uses and Trusts, 4th ed., p. 103); and when a consideration is paid and only a part of the fee limited to the purchaser, the rest results to the grantor because the extent of the express limitation is the measure of the consideration; but, upon a conveyance to a purchaser for valuable consideration, reciting a contract for purchase of the absolute fee simple, any part of the use unlimited vests in the purchaser (1 Sanders, Uses and Trusts, 4th ed., pp. 104, 105).

(*e*) 1 Sanders, Uses and Trusts, 4th ed., pp. 103, 104. But it is otherwise if the use is limited to the grantor for an estate tail and the remainder is undisposed of, for the remainder can result to the grantor without merging in the estate tail (*ibid.*, p. 103; and as to merger, see p. 332, *post*).

(*f*) 1 Sanders, Uses and Trusts, 4th ed., p. 107.

(*g*) *Cooper* v. *Kynock* (1872), 7 Ch. App. 398. The further use to C. is at law unexecuted (*Tyrrel's Case* (1557), Dyer, 155 a; *Haggerston* v. *Hanbury* (1826), 5 B. & C. 101; 2 Bl. Com. 335; 1 Sanders, Uses and Trusts, 4th ed., p. 263; Sugden's Gilbert on Uses and Trusts, p. 347). Thus it was possible for equity once again to intervene, and this construction of the Statute of Uses (27 Hen. 8, c. 10) was the occasion of the reintroduction of equitable uses under the name of trusts. The statute had, in Lord Hardwicke's somewhat exaggerated criticism, "no other effect than to add at most three words to a conveyance" (*Hopkins*

SECT. 3.
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Creation and limitation of uses.

502. Estates in the use are subject as regards duration to the same rules as legal estates at common law, and they must be created by words appropriate for the creation of common law estates (*h*). Words limiting uses receive the same construction as at law (*i*).

Uses by way of remainder or executory interests.

503. Uses may be limited to take effect in the future, and this may be either by way of remainder, in which case the future use is subject to the rules relating to the creation of remainders at common law (*j*), or by way of executory interest, in which case the limitation takes effect without regard to such rules (*k*).

Application of common law rules to uses by way of particular estates and remainders.

504. Where a conveyance made under the statute disposes, either expressly or by implication, of the uses of the entire fee by way of particular estate and remainder or reversion, each estate, so far as it is effectual, is a legal estate, and is subject to the rules applicable to common law estates. Consequently the uses themselves must supply the estates necessary to prevent the freehold from being in abeyance, no seisin for this purpose remaining in the grantees to uses (*l*). The particular freehold estate may arise either by express limitation of the use for an estate of freehold (*m*), or by a resulting use to the settlor for his life (*n*); but, if the first

alias Dare v. *Hopkins* (1738), 1 Atk. 581, 591; Challis, Law of Real Property, 3rd ed., p. 387).

(*h*) *Corbet's Case* (1600), 1 Co. Rep. 83 b, 87 b; *Nevell* v. *Nevell* (1618), 1 Roll. Abr. 837; *Makepiece* v. *Fletcher* (1734), Com. 457; 1 Sanders, Uses and Trusts, 4th ed., pp. 121 *et seq.* Thus a declaration of use in a deed to one without words of limitation gives him an estate for life only (*Abraham* v. *Twigg* (1596), Cro. Eliz. 478); and desultory limitations are not permissible (1 Sanders, Uses and Trusts, 4th ed., p. 128; Sugden's Gilbert on Uses and Trusts, p. 147, note (4); and see note (*p*), p. 216, *ante*). As to joint tenants in the use taking at different periods, see 1 Sanders, Uses and Trusts, 4th ed., p. 135; and see p. 203, *ante*.

(*i*) Sugden's Gilbert on Uses and Trusts, pp. 143, 390.

(*j*) See pp. 212 *et seq.*, *ante*.

(*k*) 1 Sanders, Uses and Trusts, 4th ed., pp. 136 *et seq.* The use is as "clay in the hands of the potter" (*Beckwith's Case* (1589), 2 Co. Rep. 56 b, 57 b), and the settlor or grantor can mould it as he will, save that if it is limited by way of remainder it cannot take effect as an executory interest (Sugden's Gilbert on Uses and Trusts, p. 304; and see p. 232, *ante*).

(*l*) See the text, *supra;* and see p. 216, *ante*. Prior to the Statute of Uses (27 Hen. 8, c. 10), the legal estate in the feoffees to uses would have supported contingent uses (see p. 224, *ante*); but the statute, by transferring the seisin to the *cestuis que use*, left nothing in the feoffees which could have this effect (*Chudleigh's Case* (1595), 1 Co. Rep. 120 a, 135 a, *per* GAWDY, J.; *Buckley* v. *Simonds* (1620), Win. 59, 60; Sugden's Gilbert on Uses and Trusts, p. 165, n.).

(*m*) *E.g.*, a grant to the use of A. for life, remainder to the use of the right heirs of B.; this is a contingent remainder (see p. 222, *ante*), and will, apart from the recent statute (see p. 225, *ante*), fail in the event of the death of A. before B.; see 1 Sanders, Uses and Trusts, 4th ed., pp. 136 *et seq.;* and see, further, note (*b*), p. 222, *ante*.

(*n*) *Pibus* v. *Mitford* (1674), 1 Vent. 372 (covenant by A. seised in fee to stand seised to the use of his heirs male by his second wife; here there was a resulting trust to A. for life, remainder to the special heirs of A., and these limitations gave A. an immediate estate tail special under the rule in *Shelley's Case* (see p. 226, *ante*); and see Fearne, Contingent Remainders, p. 41; 1 Sanders, Uses and Trusts, 4th ed., p. 138.

limitation of the use is to the settlor for a term of years, followed by a contingent use by way of remainder, no life estate results to the settlor, since this would be inconsistent with the express limitation, and the contingent uses, apart from statute (*o*), fail (*p*).

Springing uses and shifting uses.

505. When a use, not limited by way of remainder, does not defeat a previous estate expressly limited by the same conveyance, it is called a springing use; when it defeats such a previous estate, it is called a shifting use (*q*).

Freedom from common law rules.

A springing use is effectual, notwithstanding that, if the estate were created by a common law limitation, it would be void for putting the freehold into abeyance (*r*). This may be because the use is the first use limited and is to arise at a future time (*s*), or

(*o*) See p. 222, *ante*. And, as to the former liability of contingent uses to destruction, see *Chudleigh's Case* (1595), 1 Co. Rep. 120 a; 1 Sanders, Uses and Trusts, 4th ed., p. 232.

(*p*) *Adams* v. *Savage's Tertenants* (1703), 2 Salk. 679 (to use of the settlor for ninety-nine years, remainder to use of trustees for twenty-five years, remainder to heirs male of the body of settlor, remainder to his right heirs; the express limitation of the term excluded a resulting use to the settlor for life, and the remainder to the heirs male of the body of the settlor failed for want of an estate of freehold to support it); see also *Rawley* v. *Holland* (1712), 22 Vin. Abr. 189, tit. Uses (F), pl. 11; 2 Eq. Cas. Abr. 753; Sugden's Gilbert on Uses and Trusts, pp. 35, 118, note (3)); note (*b*), p. 222, *ante*. It seems, however, that in these cases, since the freehold could not be in abeyance, the fee resulted to the settlor and destroyed the term (Fearne, Contingent Remainders, p. 42, Butler's note). But they have been the subject of much criticism; see, *e.g.*, 1 Sanders, Uses and Trusts, 4th ed., p. 142. It has been suggested that, in the absence of an express or resulting freehold use, the seisin remained in the trustees and should have supported the contingent remainder (see Mr. Challis' contribution to the Law Quarterly Review, Vol. I., p. 412); or that, since there was not in the beginning an estate of freehold capable of supporting the remainder as such, it should have been treated as a springing use (Gray, Rule against Perpetuities, 2nd ed., ss. 59, 60). Upon principle, it was open to the court to take the view that a use, although limited by way of remainder, should be construed as a springing use if, for want of any possible estate of freehold to support it, it would otherwise be void in its creation (Sugden's Gilbert on Uses and Trusts, p. 167); and under similar circumstances a remainder created by will is good as a springing devise (see p. 233, *post*). On the other hand, it seems that it might be incapable of taking effect even as a springing use for want of any seisin in the grantees to uses to feed the use (see Law Quarterly Review, Vol. I., p. 412).

(*q*) Challis, Law of Real Property, 3rd ed., pp. 76, 174. If the use is limited by way of remainder, it must take effect as such (Sugden's Gilbert on Uses and Trusts, p. 172), and be supported by a preceding estate of freehold (see p. 222, *ante*). As to springing uses, see Sugden's Gilbert on Uses and Trusts, p. 161; as to shifting uses, *ibid.*, pp. 153, 286, n.; and see pp. 233, 234, *ante*.

(*r*) See p. 216, *ante*. The doctrine of resulting uses enables the future use to be created without putting the freehold into abeyance; hence, springing uses, though apparently limited in breach of the rule, are really consistent with it. The use results to the settlor until the event which gives effect to the springing use, and the freehold consequently is full; see Law Quarterly Review, Vol. I., p. 412.

(*s*) Where, *e.g.*, the conveyance is by A. to grantees to the use of B. to commence four years hence, or to the use of B. after the death of C. without issue if such event occurs within twenty years (*Clere's Case* (1599), 6 Co. Rep. 17 b; *Davies* v. *Speed* (1692), 2 Salk. 675); and, as to the common

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because it is to arise at an interval after the determination of a previous estate (*t*). A shifting use is effectual, notwithstanding that it does not, in accordance with the common law rule, wait for the regular determination of the previous estate (*a*), and, in breach of the common law, it may be limited so as to defeat a fee simple or to take effect after a determinable fee (*b*). It may be created either by words of limitation or of condition (*c*).

law rule, compare p. 216, *ante*. But it is essential that the grantees to uses should take an immediate seisin. A grant by A. to the grantees from a future date to the use of B. and his heirs is the grant of a freehold to commence *in futuro* and is void (*Roe* d. *Wilkinson* v. *Tranmarr* (1758), Willes, 682; *Lamb* v. *Archer* (1693), 1 Salk. 225; *Goodtitle* d. *Dodwell* v. *Gibbs* (1826), 5 B. & C. 709; 1 Sanders, Uses and Trusts, 4th ed., p. 137). The springing use may arise where the seisin remains in the assurer, as in a bargain and sale, or a covenant to stand seised (*Roe* d. *Wilkinson* v. *Tranmarr*, *supra*; *Doe* d. *Dyke* v. *Whittingham* (1811), 4 Taunt. 20; *Doe* d. *Starling* v. *Prince* (1851), 15 Jur. 632). As to such assurances, see pp. 282, 293, *post*.

(*t*) Where, *e.g.*, the grant is to the use of B. for life, and after a year from his death to the use of C. in fee simple; and, as to the common law rule, compare p. 217, *ante*. The principle of resulting uses is that in a conveyance to uses without valuable consideration, so much of the use as is undisposed of remains in the grantor (Co. Litt. 23 a; and see note (*n*), pp. 278, *ante*); but this is not consistently applied. Where the springing use is to arise at an uncertain time, the use in fee simple (though a determinable fee) is undisposed of, and thus in a covenant to stand seised remains in, and in a conveyance by grant results to, the settlor. Similarly, where a use is to arise after the death of the settlor, the use results to him for his life (*Pibus* v. *Mitford* (1674), 1 Vent. 372), unless there is an express limitation which excludes such resulting use (see p. 279, *ante*; Fearne, Contingent Remainders, p. 48); but the future use is in this case a remainder and not a springing use; and, where a use in fee simple is to arise after a fixed time, such as four years from the grant, the undisposed-of use is for four years only, and is an implied term in the grantor (Bacon, Reading upon the Statute of Uses, p. 63; 1 Sanders, Uses and Trusts, 4th ed., p. 139); so that the *cestui que trust*, if in existence, would take a vested fee simple in remainder expectant on the term, and not a springing use. In this case, however, it appears to have been assumed, contrary to strict principle, that the use in fee simple results to the grantor in the meantime, and that the future use is a springing use (*Davies* v. *Speed* (1692), 2 Salk. 675, *per* HOLT, C.J.; see 1 Sanders, Uses and Trusts, 4th ed., pp. 106, 138; Sugden's Gilbert on Uses and Trusts p. 162, n.); and upon a grant to the use of C. and his heirs, after the death of A. and B., it has been said that this is no remainder, but a future (*i.e.*, a springing) use (*Weale* v. *Lower* (1673), Poll. 54, 64), although there should apparently be a resulting use to the grantor for the lives of A. and B.

(*a*) See p. 217, *ante*. Thus, a grant to the use of A. for life, and if B. before a specified date shall pay £100 to the grantor, then to the use of B. for life, creates a good shifting use (*Brent's Case* (1575), 2 Leon. 14, 16; 1 Sanders, Uses and Trusts, 4th ed., p. 150). A shifting use which defeats a prior limited estate must be distinguished from a remainder upon a prior estate limited by reference to some intrinsic condition which also brings the remainder into possession (1 Sanders, Uses and Trusts, 4th ed., p. 150, where the latter is called a conditional limitation; and see note (*r*), p. 220, *ante*).

(*b*) 1 Sanders, Uses and Trusts, 4th ed., p. 143; Sugden's Gilbert on Uses and Trusts, p. 147; compare pp. 217, 218, *ante*. Thus, in the example given in note (*a*), *supra*, the uses may both be in fee simple

(*c*) For note (*c*), see next page.

SECT. 3.
Estates Arising under the Statute of Uses.

Assurance under Statute of Uses.

Operating by transmutation of possession.

506. For the statute to operate there must be an assurance by which a use can be created. Such assurance may either transfer the seisin and raise a use upon the seisin in the transferee, in which case it is said to operate by way of transmutation of possession; or without disturbing the seisin in the assurer, it may raise the use upon this seisin; it is then said to operate without transmutation of possession (*d*).

An ordinary grant to A. in fee simple to the use of B. in fee simple is an assurance of the former kind (*e*). The effect of the statute is that the legal estate in fee simple which would vest in A. is destroyed (*f*), and the estate of B., which, apart from the statute, would be only an equitable estate, becomes the legal estate in fee simple, with all the incidents of the legal estate (*g*), including all benefits and advantages inherent in the

(Bro. Abr., tit. Feoffements al Uses, pl. 30; 1 Sanders, Uses and Trusts, 4th ed., p. 144). The second fee is not limited upon, but in derogation of, the first. Where the first fee is a determinable fee, as in the first limitation in a strict settlement made on marriage, the next limitation is executory; it cannot take effect as a remainder, since it is subsequent to a fee (Challis, Law of Real Property, 3rd ed., p. 175); and compare pp. 217, 218, *ante*.

(*c*) 1 Sanders, Uses and Trusts, 4th ed., p. 153. A precedent tenant in fee simple cannot bar a shifting use, but a tenant in tail can (*ibid.*; and see p. 258, *ante*). As to shifting uses arising under the exercise of powers, see 1 Sanders, Uses and Trusts, 4th ed., p. 154; Sugden, Powers, 8th ed., pp. 140 *et seq.*; title POWERS, Vol. XXIII., pp. 1 *et seq.* As to the necessity of confining executory uses within the rule against perpetuities, see title PERPETUITIES, Vol. XXII., pp. 312 *et seq.* As to shifting uses under name and arms clauses, see 1 Sanders, Uses and Trusts, 4th ed., pp. 127, 199; and see title SETTLEMENTS.

(*d*) 1 Sanders, Uses and Trusts, 4th ed., pp. 114 *et seq.* The Statute of Uses (27 Hen, 8. c. 10) was passed before the Statutes of Wills (1540), 32 Hen. 8, c. 1; (1542-3), 34 & 35 Hen. 8, c. 5, and when, in general, lands were not devisable at law. Hence, perhaps, it does not operate directly on wills, but the use by a testator of expressions appropriate to a conveyance under the Statute of Uses (27 Hen. 8, c. 10) is an indication of his intention that the limitations shall be construed as if the will were a conveyance, and effect will be given to this intention (1 Sanders, Uses and Trusts, 4th ed., p. 243; Sugden's Gilbert on Uses and Trusts, p. 356; Co. Litt. 272 a, Butler's note 1, viii. 1; Challis, Law of Real Property, 3rd ed., p. 387; *Baker* v. *White* (1875), L. R. 20 Eq. 166, 170; see title WILLS.)

(*e*) Formerly the usual assurance operating by transmutation of possession was a feoffment with livery of seisin, and the transmutation of possession actually took place; under the modern grant, which has taken its place (see p. 294, *post*), there is not necessarily any change of possession, and the description is not strictly applicable. For other assurances, now obsolete, which formerly operated in the same way, see Challis, Law of Real Property, 3rd ed., p. 391.

(*f*) It has been said that the grantee to uses retains the right to custody of title deeds (1 Sanders, Uses and Trusts, 4th ed., p. 119), but this right now goes with the legal estate; see note (*e*), p. 239, *ante*. When, however, the legal owners are trustees, the court has power to give an equitable tenant for life the custody of the title deeds (*Re Burnaby's Settled Estates* (1889), 42 Ch. D. 621; *Re Richardson, Richardson* v. *Richardson*, [1900] 2 Ch. 778, 784; *Re Money Kyrle's Settlement, Money Kyrle* v. *Money Kyrle* [1900] 2 Ch. 839); see *Re Wilkinson, Lloyd* v. *Steel* (1901), 85 L. T. 43; and as to custody of title deeds as between tenant for life and remainderman, see p. 239, *ante*; title SETTLEMENTS.

(*g*) 1 Sanders, Uses and Trusts, 4th ed., p. 119.

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estate, and the benefit of covenants running with the land (*h*); and, generally, the *cestui que use* has the same estate at law as that limited to him in the use (*i*).

A bargain and sale (*k*), or a covenant to stand seised (*l*)—both of which forms of assurance are now practically obsolete,—are assurances of the latter kind. The seisin remained, but for the statute, in the vendor or settlor, but upon this seisin a use was raised in favour of the purchaser or donee, and the statute joined the possession to this use and turned it into the legal estate (*m*).

Operation without transmutation of possession.

Operation of Statute of Uses limited to estate of person seised.

507. The statute only operates, however, to the extent of the estate of the person who is seised to the uses; if this is the fee simple, uses can be declared which exhaust the fee simple; if it is less than the fee simple, the effective uses are restricted accordingly (*n*). When, upon a grant in fee simple, uses are declared for a particular estate with a vested remainder, the uses are at once executed by the statute, and the legal estate is finally divided between the particular estate and the remainder; but when a use in remainder is contingent, it cannot be executed till the remainder vests, and it was formerly a question whether any and what interest remained in the feoffees to uses to serve the remainder when it vested. The same question arose when a future interest was limited by way of executory use. To meet the difficulty it was said that, while the whole seisin was by the statute carried over from the feoffees to uses to the *cestuis que use* who had vested estates, yet a possibility of seisin or a *scintilla juris* remained in them, which was sufficient to give effect, when necessary, to contingent or executory uses (*o*). It is now, however, provided by statute that all such uses shall take effect when and as they arise by force of, and by relation to, the seisin originally vested in the person seised to the uses; and the continued existence in him of any *scintilla juris* is not necessary (*p*).

Statutory protection for shifting uses.

(*h*) 1 Sanders, Uses and Trusts, 4th ed., p. 120.

(*i*) See *Re Dudson's Contract* (1878), 8 Ch. D. 628, C. A. As to possession of a term under a limitation of the use of the term, see *Hadfield's Case* (1873), L. R. 8 C. P. 306.

(*k*) A mere contract for value would have passed the legal estate under the statute; but to prevent this the statutory requirement of an enrolled deed was introduced (see p. 294, *post*). The enrolment relates back so as to give the legal estate to the purchaser by virtue of the Statute of Uses (27 Hen. 8. c. 10), as from the time of execution (Sugden's Gilbert on Uses and Trusts, pp. 202, 209, n.).

(*l*) *Ibid.*, p. 242; and see note (*f*), p. 294, *post*.

(*m*) 1 Sanders, Uses and Trusts, 4th ed., p. 114; Challis, Law of Real Property, 3rd ed., p. 392.

(*n*) 1 Sanders, Uses and Trusts, 4th ed., p. 109. But a tortious seisin in fee allows of uses in fee being declared on it (*ibid.*, p. 110).

(*o*) Other theories were that the seisin was *in nubibus* or in the custody of the law; see *Chudleigh's Case* (1595), 1 Co. Rep. 120 a; Fearne, Contingent Remainders, p. 446; 1 Sanders Uses and Trusts, pp. 110 *et seq.*; Sugden's Gilbert on Uses and Trusts, p. 296, n.; Williams, Real Property, 21st ed., p. 380.

(*p*) Law of Property Amendment Act, 1860 (23 & 24 Vict. c. 38), s. 7.

SECT. 4.—*Estates Arising by Prescription.*

SECT. 4. Estates Arising by Prescription.

508. When the owner of land has been out of possession, and a stranger has been in possession, for a period sufficient to bar the owner's right to re-enter or to recover possession by action, the owner's title is extinguished (*q*), and the stranger acquires a title which is good against all the world, including the former owner.

Adverse possession.

Although the Statutes of Limitation operate negatively to bar the right and extinguish the title of the true owner, and do not, as is the case with true prescription (*r*), directly confer a title on the possessor, yet the effect is the same as though the possessor gained a title by prescription (*s*).

Negative operation.

SECT. 5.—*Estate of a Married Woman.*

509. A married woman may be entitled to separate estate in equity, in which case her interest may be subject to a restraint on anticipation, or by statute. The nature and incidents of such separate estate are fully dealt with elsewhere (*t*).

Estate of a married woman.

Part IV.—Equitable Estates and Interests in Land.

510. The chief sources of equitable interests in land are trusts (*u*) and mortgages (*x*). Under a trust, the legal estate is vested in the trustee and the beneficial interest in the *cestui que trust*. In general, the equitable interest is subject, by way of analogy, to the same rules as the legal estate. Under a legal mortgage the legal estate is vested in the mortgagee, and an equitable interest, known as the equity of redemption, in the mortgagor. The incidents both of beneficial estates under trusts and of the equity of redemption are dealt with elsewhere (*y*); so also is the operation of restrictive

Equitable interests.

(*q*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 34; see title LIMITATION OF ACTIONS, Vol. XIX., p. 155.

(*r*) See title EASEMENTS AND PROFITS À PRENDRE, Vol. XI., pp. 256 *et seq.*

(*s*) In *Scott* v. *Nixon* (1843), 3 Dr. & War. 388, 407, and *Doe* d. *Jukes* v. *Sumner* (1845), 14 M. & W. 39, it was said that the statute effected a parliamentary conveyance; but in fact its operation is purely negative, and the new title depends on the principle that possession gives a title. The subject is fully dealt with under title LIMITATION OF ACTIONS, Vol. XIX., pp. 155 *et seq.*; and as to a possessory title being forced on a purchaser, see title SALE OF LAND. As to title to land formed by alluvion and diluvion, see title CONSTITUTIONAL LAW, Vol. VII., p. 116.

(*t*) See title HUSBAND AND WIFE, Vol. XVI., pp. 341 *et seq.* As to restraint on anticipation, see *ibid.*, pp. 359 *et seq.*

(*u*) See title TRUSTS AND TRUSTEES.

(*x*) See title MORTGAGE, Vol. XXI., pp. 65 *et seq.*

(*y*) See, further, title EQUITY, Vol. XIII., pp. 88 *et seq.*; and for the particular treatment of trust estates, see title TRUSTS AND TRUSTEES; of equities of redemption, see title MORTGAGE, Vol. XXI., pp. 138 *et seq.* As to equitable heirlooms, see p. 241, *ante*; and see also title SETTLEMENTS.

PART IV. Equitable Estates and Interests in Land.

covenants in creating an equitable interest in land in the nature of a negative easement (*a*).

Part V.—Incorporeal Rights and Interests in Land.

SECT. 1.—*In General.*

Incorporeal rights.

511. Incorporeal rights in land (*b*) include seigniories (*c*), rights of common (*d*), *profits à prendre* (*e*), franchises (*f*), easements (*g*), advowsons (*h*), and tithes (*i*). All these are dealt with fully elsewhere (*k*). Land charges, where not accompanied by the legal estate, or any equitable estate in the land, are in the nature of incorporeal rights in land (*l*); and so also are licences to enter upon land (*m*), since they do not give any right to exclusive possession. These also are dealt with elsewhere (*n*). The subject of rents is dealt with under different headings (*o*), but the following general observations may be made here.

SECT. 2.—*Rents.*

Rent service and rentcharge.

512. Rent is either rent service (*p*) or rentcharge (*q*). In either case it is a periodical payment made in respect of land, but the two

(*a*) See titles EASEMENTS AND PROFITS À PRENDRE, Vol. XI., p. 247; EQUITY, Vol. XIII., p. 100; SALE OF LAND.

(*b*) As to incorporeal hereditaments, see p. 160, *ante*.

(*c*) As to seigniories, see pp. 142, 150, *ante*; title COPYHOLDS, Vol. VIII., pp. 3, 4.

(*d*) As to rights of common, see titles COMMONS AND RIGHTS OF COMMON, Vol. IV., pp. 441 *et seq.*

(*e*) As to *profits à prendre*, see title EASEMENTS AND PROFITS A PRENDRE, Vol. XI., pp. 336 *et seq.*

(*f*) As to franchises, see titles CONSTITUTIONAL LAW, Vol. VI., pp. 489—492; COPYHOLDS, Vol. VIII., pp. 5 *et seq.*; FERRIES, Vol. XIV., pp. 555 *et seq.*; FISHERIES, Vol. XIV., pp. 569 *et seq.*; MARKETS AND FAIRS, Vol. XX., pp. 6, 7.

(*g*) As to easements, see title EASEMENTS AND PROFITS À PRENDRE, Vol. XI., pp. 233 *et seq.*

(*h*) As to advowsons, see title ECCLESIASTICAL LAW, Vol. XI., pp. 564 *et seq.*

(*i*) As to tithe, see *ibid.*, pp. 742 *et seq.*

(*k*) See notes (*c*)—(*i*), *supra*.

(*l*) As to land charges, see titles LAND IMPROVEMENT, Vol. XVIII., pp. 275 *et seq.*; MORTGAGE, Vol. XXI., p. 105; SALE OF LAND; SETTLEMENTS.

(*m*) As to licences to enter on land, see title LANDLORD AND TENANT, Vol. XVIII., p. 337; MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 569, 570.

(*n*) See notes (*l*), (*m*), *supra*.

(*o*) See the text, *infra*.

(*p*) As to services incidental to feudal tenure, and the gradual development of rent service, see pp. 138 *et seq.*, *ante*.

(*q*) "Three manner of rents there be, that is to say, rent service, rent charge, and rent secke" (Littleton's Tenures, s. 213). Rent sec was

forms of rent are fundamentally different. Rent service is incident to the relation of landlord and tenant; it is a payment made by the tenant as a recompense for the use of the land (*a*), and the receipt of it constitutes the chief beneficial right of ownership. The landlord enjoys his ownership by virtue of the receipt of rent. A rentcharge, on the other hand, is a burden on the ownership. The owner of the rentcharge is entitled to a fixed periodical sum as against the owner of the land, and, in effect, this is paid out of the rent service which the owner of the land receives (*b*).

Rent incident to seigniory.

513. Before the Statute Quia Emptores (*c*) a tenant in fee simple could grant the land for a like estate by way of subinfeudation, and on such grant could reserve a rent (*d*). His right in the land was changed to a seigniory, and to this seigniory the rent was incident as a rent service. Such rents still exist, and are known as chief rents, rents of assize, quit rents, and fee farm rents. As a rule they are payable by freehold tenants of a manor; but rents of assize and quit rents are also payable by copyhold tenants. A rent of assize is a rent which has been assized, or reduced to a certainty, by the lord of the manor; a quit rent is a rent reserved in lieu of all other services; but in principle there is no distinction between chief rents, rents of assize, and quit rents (*e*). Fee farm rents in theory differ from chief rents in being reserved as the actual equivalent for the use of the land instead of merely by way of service. They are the ancient form of conventional rent, and accordingly they are supposed to be substantial in amount. It has been said that a fee farm rent must be at least one quarter of the annual value of the land (*f*).

Chief rent, rent of assize, quit rent, fee farm rent.

formerly a rent without power of distress (Littleton's Tenures, ss. 217, 218), but as a power of distress is now incident to every rent charged on land (Landlord and Tenant Act, 1730 (4 Geo. 2, c. 28), s. 5; Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 44), rents sec have ceased to exist.

(*a*) As to rents reserved on leases, see titles DISTRESS, Vol. XI., pp. 119 *et seq.*; LANDLORD AND TENANT, Vol. XVIII., pp. 464 *et seq.* As to apportionment of such rents, see *ibid.*, pp. 482 *et seq.*

(*b*) The distinction between the two forms of rent is illustrated by the decisions relating to rent on the Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27). The definition clause (*ibid.*, s. 1) is wide enough to include both rentcharges and all kinds of rent service; but, in limiting actions for the recovery of rent, this Act and the Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), apply only to rentcharges (*Grant* v. *Ellis* (1841), 9 M. & W. 113); and, as to the meaning of "rent" in the Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 9, where it is used several times in each sense, see *Doe* d. *Angell* v. *Angell* (1846), 9 Q. B. 328, *per* Lord DENMAN, C.J., at p. 356; and see title LIMITATION OF ACTIONS, Vol. XIX., p. 107.

(*c*) (1290) 18 Edw. 1, c. 1; see p. 144, *ante*.

(*d*) Littleton's Tenures, s. 216.

(*e*) As to these forms of rent, see 2 Bl. Com. 42, 43; Scriven on Copyholds, 7th ed., p. 240; title COPYHOLDS, Vol. VIII., p. 46. As to the modern use of the term "chief rent," see note (*f*), *infra*; and see title RENTCHARGES AND ANNUITIES, pp. 463 *et seq.*, *post*.

(*f*) "If it be to the whole value of the land, or to the fourth part of the value, then the rent is called a fee farm" (Co. Litt. 143 b; 2 Bl. Com. 43; and see p. 142, *ante*). The expression is also sometimes used to denote a rentcharge in fee created on the grant of an estate in fee simple—the modern chief rent (Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 14 (3); Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 10).

SECT. 2. Rents.

Estates in respect of which rents are reserved.

514. Since the Statute Quia Emptores (*g*) the reservation of rent service on the grant of land in fee simple has been impossible; but it can be reserved on a grant of land for any less estate. Such a grant, whether in tail, for life or lives, or for years (*h*), leaves a reversion in the grantor, and to this reversion the rent service is incident (*i*), and the reversioner has at common law a power of distress for recovery of the rent (*k*). Reservations of rent on a grant of an estate tail do not occur in practice; reservations of rent on leases for lives or years are called "conventional" rents, and when the rent represents the full value of the tenement, by the year—that is, the gross value—or nearly so, it is called a rack rent (*l*).

Rack rent.

Rentcharge.

515. A rentcharge is a rent issuing out of land and secured, whether expressly or by statute, by a power for distress (*m*).

Part VI.—Transfer of Land Inter Vivos.

SECT. 1.—*Origin of Complete Power of Alienation.*

Alienation under feudal system.

516. Alienation of land under the feudal system might take place by transfer or by subinfeudation (*n*). A tenant in fee simple who actually transferred the land, and obtained the substitution of a new tenant in his place, retained no interest in the land or its profits: if he granted the land to be held of himself by way of subinfeudation, he equally ceased to be entitled to the land, but he had in its stead a mesne seigniory; he remained liable to his overlord for the services due from him, and was entitled as an incident of seigniory to the service due from his own tenant. Such dealings

(*g*) (1290) 18 Edw. 1; see p. 144, *ante*.

(*h*) Littleton's Tenures, s. 214. This assumes that the grantor has a sufficient estate to support the grant. As to the insufficiency of his estate, see title RENTCHARGES AND ANNUITIES, pp. 497 *et seq.*, *post*.

(*i*) The reversion must remain in the grantor; if he grants the rest of the fee simple over as a remainder, he cannot reserve a rent as rent service (Littleton's Tenures, s. 215). But the rent is not, like fealty, inseparably incident to the reversion; the lessor can subsequently grant the reversion and reserve the rent to himself, or *vice versâ* (Co. Litt. 143 a); but the power of distress follows the reversion; and see title DISTRESS, Vol. XI., p. 119.

(*k*) Littleton's Tenures, s. 213.

(*l*) 2 Bl. Com. 43. It has been said that a rack rent is a rent that represents the full annual value of the holding (*Ex parte Connolly to Sheridan and Russell*, [1900] 1 I. R. 1, 6, C. A.); but annual value means primarily net annual value, while rack rent is the full or gross rental as distinguished from net annual value (*Stevens* v. *Barnet District Gas and Water Co.* (1888), 36 W. R. 924); see Stroud, Judicial Dictionary, 2nd ed., p. 1643; and compare title RATES AND RATING, p. 25, *ante*. The payment of a premium shows that the rent is not a rack rent (*Ex parte Connolly to Sheridan and Russell, supra*). For a statutory definition of "rack rent," see the Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), s. 109; Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 4.

(*m*) The subject of rentcharges is fully dealt with elsewhere; see title RENTCHARGES AND ANNUITIES, pp. 463 *et seq.*, *post*.

(*n*) See pp. 142, 143, *ante*.

SECT. 1. Origin of Complete Power of Alienation.

with the land might affect the interests either of the overlord or of the tenant's expectant heirs (*o*), and it is probable that in early times the consent of the lord and the heirs was necessary for a transfer of the land, and possibly for a grant by way of subinfeudation.

Alienation as affecting the lord.

517. An alienation by transfer affected the lord by substituting a tenant whose personal qualifications might not be desirable; an alienation by subinfeudation affected him because it substituted a mesne seigniory for the land itself as the source to which he must look for his feudal profits, and this might lessen their value (*o*). It is not clear, however, that the lord ever had, under the English feudal system, a recognised right to forbid alienation; on the other hand, he may have had a right, more or less indeterminate, to prevent alienations which would be seriously prejudicial to him (*p*). But the tendency was in favour of free alienation, and according to one view, in the period immediately preceding the Great Charta of 1217, the tenant could, without consent of the lord, alienate the whole or part of the land by subinfeudation, and the whole, though perhaps not part, by transfer (*q*). The Great Charta of that year implies the general right of alienation by introducing an exception. Thenceforth, so it enacted, no free man should give or sell so much of his land as that out of the residue he might not be able to do the services pertaining to his fee (*a*). But this left the power of alienation indefinite, and for safety the lord's licence was necessary (*b*).

Alienation as affecting the heir.

518. A restraint on alienation might also be imposed by family law; the land might be the land of a group of persons constituting a family, or it might be land in which rights of inheritance existed which the owner for the time being was not at liberty to frustrate. Family ownership does not seem to have existed in England in historical times (*c*); but in early times the owner had not such complete power of disposition over land, whether hereditary or purchased, that he could alienate it entirely. He had to leave a reasonable part for the heirs (*d*), and hence the consent of the presumptive heirs was necessary to validate the title of a purchaser (*e*). But this

(*o*) Pollock and Maitland, History of English Law, Vol. I., p. 311; and see Williams, Law of Real Property, 21st ed., pp. 70 *et seq.*

(*p*) Pollock and Maitland, History of English Law, Vol. I., p. 326; and see p. 143, *ante*.

(*q*) Pollock and Maitland, History of English Law, Vol. I., p. 320; and see note (*g*), p. 143, *ante*.

(*a*) Magna Carta (1217), c. 39. In Magna Carta, 1225 (9 Hen. 3), which is the first statute printed in the Statutes at Large (Tomlin's ed., 1811), this provision is c. 32; see Pollock and Maitland, History of English Law, Vol. I., p. 313; and see note (*k*), p. 143, *ante*.

(*b*) Challis, Law of Real Property, 3rd ed., p. 21.

(*c*) Pollock and Maitland, History of English Law, Vol. II., pp. 248, 252.

(*d*) Glanv. lib. vii., c. 1; see Digby, History of the Law of Real Property, 5th ed., p. 101. The form of grant to the owner might forbid his alienating the land away from his kindred (*ibid.*, p. 13); and see, generally, as to the progress of the right of alienation as against the heir, Williams, Law of Real Property, 21st ed., pp. 68 *et seq.*

(*e*) There was also sometimes a custom—known as *retrait lignager*—enabling the heir apparent to redeem his inheritance, if sold by his ancestor, within a year and a day of the sale (Pollock and Maitland, History of English Law, Vol. I., p. 632).

SECT. 1. Origin of Complete Power of Alienation.

necessity disappeared, and the heirs ceased to have any control over the property during the ancestor's life, notwithstanding that they were mentioned in the limitation to him (*f*). A limitation to a man and his heirs defined the duration of his estate, but did not confer an independent interest upon the heirs; and it was the same if the limitation was to a special class of heirs, such as heirs of the body of the ancestor. It became settled that such a limitation operated, so far as concerned the power of alienation, only as a condition. As soon as there was a child to answer the limitation, the condition was performed and the ancestor had absolute power of alienation. This meant that "form of the gift" was disregarded (*g*).

Freedom of alienation.

519. The beginning of the reign of Edward I. found the law on the above described footing. It was then resettled by the two fundamental statutes, De Donis Conditionalibus (*h*) and Quia Emptores (*i*). The first statute protected the interests of heirs of the body, and created estates tail (*k*). But, in the absence of a special form of limitation, there was not then, nor has there ever been since, any protection for heirs during the life of the ancestor. Indeed, during his life the heir does not exist: *nemo est hæres viventis* (*l*). Moreover, the courts infringed upon the statutory protection of heirs of the body by sanctioning the fictitious proceedings for the barring of estates tail (*m*). The second statute—Quia Emptores (*i*)—removed all restraint on alienation which had existed in the interest of the lord, and allowed of the free alienation of estates in fee simple by way of transfer, but at the same time it put an end to transfer by way of subinfeudation (*n*). Since that time the right of alienation has been a necessary part of the ownership of an estate in fee simple and of property in land generally, and any attempt to restrict this right is generally void except in the case of married women (*o*).

(*f*) Pollock and Maitland, History of English Law, Vol. I., p. 13; Digby, History of the Law of Real Property, 5th ed., p. 157.

(*g*) Pollock and Maitland, History of English Law, Vol. II., pp. 17 *et seq.*; and see p. 172, *ante*.

(*h*) (1285), 13 Edw. 1, Statute of Westminster II., c. 1; see pp. 172, 241 *et seq.*, *ante*.

(*i*) (1290), 18 Edw. 1; see p. 144, *ante*.

(*k*) See pp. 241, 247, *ante*.

(*l*) See note (*a*), p. 222, *ante*.

(*m*) See pp. 247, 248, *ante*.

(*n*) Pollock and Maitland, History of English Law, Vol. I., p. 318; see p. 144, *ante*.

(*o*) See title Gifts, Vol. XV., pp. 422 *et seq.* (where the validity of restraints on alienation is fully discussed); and see title HUSBAND AND WIFE, Vol. XVI., pp. 359 *et seq.* The rule does not prevent restrictions being placed on alienation for particular purposes; *e.g.*, alienation in mortmain; see titles CHARITIES, Vol. IV., pp. 124 *et seq.*; CORPORATIONS, Vol. VIII., pp. 367 *et seq.* As to conveyances in fraud of creditors, see title FRAUDULENT AND VOIDABLE CONVEYANCES, Vol. XV., pp. 78 *et seq.*; and as to alienation by will, see title WILLS. As to involuntary alienation, see title EXECUTION, Vol. XIV., pp. 61 *et seq.* As to the recognition paid by the court to limitations which, in this connection, are invalid by English law, although allowed by the *lex loci rei sitæ*, see *Re Fitzgerald, Surman* v. *Fitzgerald*, [1904] 1 Ch. 573, C. A. (life interest to a man in a Scottish heritable bond subject to protection analogous to

SECT. 1.
Origin of Complete Power of Alienation.

Transfer of seigniory and attornment.

520. Correlative to the right of a lord to object to the substitution of a new tenant is the right of the tenant to object to the substitution of a new lord; in other words, to the transfer of the seigniory. This involved questions both of allegiance and seisin. The tenant's homage and fealty must be transferred, and since the grantee cannot be put in seisin of the seigniory save by the acknowledgment of the tenant, the transfer appears to depend on the consent of the tenant. It seems, however, that there was a process for compelling tenants to attorn to the new lord, and in practice the rights of the tenants did not prevent alienations by the lord (*p*).

Alienation of contingent and executory interests, and rights of entry.

521. At common law, no possibility, right, title, or thing in action is assignable (*a*); and contingent remainders and executory interests were treated as possibilities so as to fall within this rule (*b*); but they might be released (*c*), and they were bound by estoppel (*d*); and assurances and contracts relating to them, if made for valuable consideration, were recognised as effectual in equity (*e*). It is, however, provided by statute that a contingent, an executory, and a future interest, and a possibility coupled with an interest (*f*), in any tenements or hereditaments of any tenure (*g*), whether the object of the gift or limitation of such interest or possibility is or is not ascertained, may be disposed of by deed (*h*). This power extends also to a right of entry into any tenements or hereditaments (*i*).

restraint on anticipation); see title CONFLICT OF LAWS, Vol. VI., p. 209; and see *ibid.*, p. 197.

(*p*) Pollock and Maitland, History of English Law, Vol. II., pp. 327 *et seq.* The attornment is originally the turning over of the tenant to a new lord (*ibid.*, p. 329). As to the modern form of attornment, see title LANDLORD AND TENANT, Vol. XVIII., p. 335.

(*a*) *Lampet's Case* (1612), 10 Co. Rep. 46 b, 48 a; and see, further, title CHOSES IN ACTION, Vol. IV., p. 365, note (*n*).

(*b*) See *Fulwood's Case* (1591), 4 Co. Rep. 64 b, 66 b.

(*c*) *Lampet's Case, supra*, at p. 48 b.

(*d*) *Weale* v. *Lower* (1673), Poll. 54; *Doe* d. *Brune* v. *Martyn* (1828), 8 B. & C. 497; *Doe* d. *Christmas* v. *Oliver* (1829), 10 B. & C. 181; and see title ESTOPPEL, Vol. XIII., p. 374.

(*e*) See title EQUITY, Vol. XIII., p. 102.

(*f*) A mere *spes successionis* is not within this provision (*Re Ellenborough, Towry Law* v. *Burne*, [1903] 1 Ch. 697, 699); see p. 238, *ante*.

(*g*) This provision deals with the transfer of existing interests, and not with the creation of new interests (*Savill Brothers, Ltd.* v. *Bethell*, [1902] 2 Ch. 523, 540, C. A.).

(*h*) Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 6; and see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 369.

(*i*) The Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 6, was construed so as to apply only to rights of entry after a disseisin, and not to a right of entry for condition broken (see cases cited in title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 369, note (*g*)); and it seems that the same construction applies to the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 10; see *Cohen* v. *Tannar*, [1900] 2 Q. B. 609, C. A. But these decisions are overruled, so far as regards rights of re-entry for breach of covenants in a lease, by the Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 2. For the law as to rights of entry prior to 1845, see stat. (1540) 32 Hen. 8, c. 9; *Doe* d. *Williams* v. *Evans* (1845), 1 C. B. 717.

SECT. 2. **Transfer by Assurance.**

SECT. 2.—*Transfer by Assurance.*

SUB-SECT. 1.—*Kinds of Assurance.*

(i.) *In General.*

Assurances at common law and by statute.

522. Interests in land are conveyed by assurances which take effect at common law, or by statute, or partly at common law and partly by statute. The assurance is now usually made by deed alone, but, originally, interests involving immediate possession for an estate of freehold were, save in certain special cases (*k*), conveyed by deed accompanied by delivery of possession—that is, in such a case, seisin—and knowledge of this form of conveyance, and of the forms of conveyance which were intended to avoid actual delivery of possession, is still of practical use (*l*).

(ii.) *Assurances at Common Law.*

Livery of seisin.

Livery in deed or in law.

523. At common law an estate of immediate freehold passes by livery of seisin. This form of assurance is known as a feoffment (*m*). Livery of seisin is livery in deed or livery in law. Livery in deed involves the actual delivery of vacant possession by the feoffor to the feoffee (*n*), and this might be effected by words spoken upon the property, indicating the intention to deliver possession, and either accompanied or not by the delivery of a turf or other article symbolical of the land itself (*a*). If a tenant is in possession, and he or any one representing him is on the land, he must assent to the livery (*b*). Livery in law is effected by words spoken in sight of the land, and is turned into livery in deed by the subsequent entry of the feoffee during the life of the feoffor (*c*).

(*k*) *I.e.*, release, surrender, exchange and partition; see pp. 292, 293, 295, *post*.

(*l*) As to conveyances by fines and recoveries, see pp. 247—249, *ante*. Fines were not confined to barring estates tail. They were a bar to all claims at the expiration of five years from the levying of the fine; but, as regards persons under disability, the five years ran from the removal of the disability, and, as regards persons entitled to future estates, from the time when their estates fell into possession. Hence they might validate a title under a tenant for life or a disseisor, and, generally, they were used to confirm doubtful titles; see Challis, Law of Real Property, 3rd ed., pp. 393 *et seq.*; and see note (*k*), p. 249, *ante*.

(*m*) As to feoffment generally, see 2 Bl. Com. 310 *et seq.*; Challis, Law of Real Property, 3rd ed., pp. 397 *et seq.* Strictly, "feoffment," "feoffor," and "feoffee" are terms appropriate to a grant in fee simple; "donation," "donor," and "donee" to an estate tail; "lease," "lessor," and "lessee" to an estate for life (Littleton's Tenures, s. 57; 2 Bl. Com. 316); but any livery of the seisin for an estate of freehold is commonly called "feoffment" (Challis, Law of Real Property, 3rd ed., p. 398).

(*n*) "Vacant possession" does not require, as is sometimes said, that there shall be no person at all on the land or in the house other than the feoffor and feoffee. All that is really necessary is that there shall be no other person claiming the possession, either on his own account or for another (*Doe* d. *Reed* v. *Taylor* (1833), 5 B. & Ad. 575).

(*a*) Co. Litt. 48 a; Shep. Touch. (ed. Preston) 203.

(*b*) Co. Litt. 48 b; 2 Bl. Com. 315; 2 Preston, Abstracts of Titles, 291; Challis, Law of Real Property, 3rd ed., p. 399.

(*c*) Co. Litt. 48 b; 2 Bl. Com. 316; Challis, Law of Real Property, 3rd ed., p. 399.

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524. Livery of seisin was usually, though at common law not necessarily (*d*), accompanied by a charter of feoffment defining the lands assured and the estate taken by the feoffee, and containing a warranty of title by the feoffor. A memorandum of livery of seisin was indorsed on the charter (*d*). Under the Statute of Frauds (*e*) a feoffment could convey no greater estate than a tenancy at will unless evidenced by writing, and, under the Real Property Act, 1845 (*f*), a feoffment is void at law unless evidenced by deed, except in the case of a feoffment made under a custom by an infant (*g*). The livery of seisin was usually expressed to be made according to the form of the charter, and the charter controlled the effect of the livery. If the limitations in the charter were void under common law rules, for example, by purporting to create a freehold *in futuro* (*h*), the livery was void; if the limitations in the deed differed from limitations expressed verbally on the livery, those in the deed prevailed (*i*).

Charter of feoffment.

Any person in possession could by livery of seisin effect a tortious feoffment and vest the fee simple in the feoffee (*j*); and if he limited a less estate to the feoffee, a tortious reversion vested in himself (*k*).

Tortious feoffment.

(*d*) Co. Litt. 48 b, 330 b, note (1); and see title DEEDS AND OTHER INSTRUMENTS, Vol. X., pp. 362, note (*a*), 367 note (*t*). But a deed or charter of feoffment was necessary in the case of a feoffment by a corporation aggregate (Co. Litt. 94 b). For form of a charter of feoffment with memorandum, see 2 Bl. Com., Appendix i.

(*e*) 29 Car. 2, c. 3, s. 1.

(*f*) 8 & 9 Vict. c. 106, s. 3; and see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 367.

(*g*) *E.g.*, in the case of gavelkind lands; see p. 152, *ante*. As to the meaning of "void at law," see *Zimbler* v. *Abrahams*, [1903] 1 K. B. 577, 579, C. A.: and see title LANDLORD AND TENANT, Vol. XVIII, pp. 460, 461.

(*h*) See p. 216, *ante*. But if a term and a freehold in remainder expectant upon it were created at the same time, livery of seisin sufficient to support the remainder might be made to the termor (Littleton's Tenures, s. 60; Co. Litt. 49 b; Challis, Law of Real Property, 3rd ed., p. 403).

(*i*) Co. Litt. 48 a, b, 222 b; Challis, Law of Real Property, 3rd ed., p. 403.

(*j*) A feoffment was the only form of conveyance which had this effect (Co. Litt. 49; 2 Sanders, Uses and Trusts, 14, 15).

(*k*) A tortious feoffment by a tenant for years or for life, or any other person than a tenant in tail, turned the estate of the freeholder or the remainderman to a right of entry; if the feoffee died in possession, the right of entry was "tolled by descent cast," and the true owner was put to his right of action (Co. Litt. 327 a, b); and see note (*p*), p. 177, *ante*. A feoffment by a tenant in tail in possession, or by a person seised in right of another, operated as a discontinuance of the estate tail or other particular estate and the remainders upon it (see note (*p*), p. 250, *ante*); this meant that the issue and the remaindermen had, when their estates fell into possession, no right of entry, but only a right of action (Littleton's Tenures, ss. 592—595); but on a feoffment by a husband seised in right of his wife, the wife's right of entry was preserved by statute (stat. (1540) 32 Hen. 8, c. 28, s. 6; Co. Litt. 326 a). The effect of descent cast and discontinuance, and the distinction between rights of entry and rights of action, were abolished by the Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), ss. 36, 39: see titles ACTION, Vol. I., pp. 33, 34, 46; LIMITATION OF ACTIONS, Vol. XIX., pp. 104, 105. In *Taylor* d. *Atkyns* v. *Horde* (1757), 1 Burr. 60, Lord MANSFIELD, C.J., attempted to deprive feoffments by tenants of years of their tortious effect: as to this, see Co. Litt. 330, Butler's note; and, generally, as to tortious feoffments, see Challis, Law of Real Property, 3rd ed., pp. 405 *et seq.*

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A feoffment now has no tortious operation, and hence it conveys only such estate as the feoffor is entitled to dispose of (*l*).

Release.

525. When a man is already in possession of land, his interest therein may be altered at common law without any livery of seisin. If he has no right against the lawful owner, but only an estate gained by disseisin, this estate may be turned to a lawful estate by a release by the disseisee of his right (*m*). If he has a limited right, such as an estate for life or for years, and the remainderman or reversioner in fee releases all his right to him and his heirs, this enlarges his estate to a fee simple (*n*). He is already in possession, and no livery of seisin is required.

Surrender.

526. A surrender is the opposite of a release; in a release the greater future estate is abandoned to and enlarges the smaller particular estate; in a surrender the smaller particular estate is given up to and merges in the greater future estate (*o*). It is necessary, therefore, that the future estate should be the greater; a tenant for life cannot surrender to a remainderman for years (*p*), and there must be privity of estate between

(*l*) Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 4.

(*m*) Littleton's Tenures, s. 445. This release operates *mitter le droit*; an estate which before was wrongful it makes lawful (Littleton's Tenures, s. 466; 2 Bl. Com. 325). All express releases must be by deed (Co. Litt. 264 b; see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 363).

(*n*) The release operates *enlarger l'estate* (Littleton's Tenures, s. 465; 2 Bl. Com. 324). The releasee must be in possession; hence there cannot be a release to a tenant before he enters, while his interest is only an *interesse termini* (Littleton's Tenures, s. 459; Co. Litt. 270 a); and for a release to operate by way of enlarging the estate, there must be privity of estate between releasor and releasee, *i.e.*, both estates must exist as estates—a tenant at sufferance cannot take a release, though a tenant at will can (Littleton's Tenures, s. 460; Co. Litt. 270 b; *Butler* v. *Duckmanton* (1607), Cro. Jac. 169; see title LANDLORD AND TENANT, Vol. XVIII., p. 438)—and must have been carved out of the same original estate, so that they can still be treated as the same estate in law (2 Bl. Com. 325). A release by the freehold reversioner to the lessee for years gives him the freehold and converts his possession into seisin (Littleton's Tenures, s. 546; Challis, Law of Real Property, 3rd ed., p. 409). A release may also operate *mitter l'estate*, where, for example, one of two coparceners releases to the other (see p. 211, *ante*), or one of three joint tenants releases to one of the others: this creates a fresh title in the releasee, or, in Sir E. COKE's phrase, makes a degree; but a release by one of two joint tenants to the other does not operate *mitter l'estate* and makes no degree, the releasee having the whole under his original title, and see note (*n*), p. 203, *ante*. Releases that operate *mitter l'estate* also require privity of estate between releasor and relesaee (Co. Litt. 273 b; 2 Bl. Com. 325). A confirmation is sometimes said to enlarge an estate, but in this case it operates in all respects as a release; more properly it validates a voidable estate, where, for instance, a remainderman confirms a lease made by a tenant for life who dies during the term (Littleton's Tenures, ss. 515 *et seq.*; Co. Litt. 295 b *et seq.*; 2 Bl. Com. 325).

(*o*) 2 Bl. Com. 326. "Surrender properly is a yielding up an estate for life or years to him that hath an immediate estate in reversion or remainder, wherein the estate for life or years may drown by mutual agreement between them" (Co. Litt. 337 b; and see *ibid.*, 50 a). There are, however, other kinds of surrenders, such as surrenders of copyholds (Co. Litt. 338 a see title COPYHOLDS, Vol. VIII., pp. 89 *et seq.*).

(*p*) 2 Bl. Com. 326.

surrenderor and surrenderee (*q*). Moreover, the surrenderor must be in possession, and since his possession supports the future estates the surrender takes effect without livery of seisin (*q*). By the Statute of Frauds (*r*) a surrender is required to be in writing, signed by the surrenderor or his agent; it is now void at law (*s*), unless made by deed (*t*).

Grant.

527. Hereditaments which, from their incorporeal nature, were not capable of actual livery, were assignable at common law by deed and accordingly were said to lie in grant (*u*). In the case of seigniories and reversions, the attornment of the tenant was necessary to complete the grant (*v*), but now the grant of a reversion is effectual without attornment (*a*). Although, however, reversions and remainders were treated as incorporeal hereditaments, and were capable, at common law, of being conveyed by grant, it was not usual to employ this mode of assurance, and they were commonly conveyed by one of the modes which, while dispensing with livery of seisin, were appropriate to the conveyance of corporeal hereditaments, namely, lease and release, and bargain and sale enrolled (*b*).

(iii.) *Assurances under Statute.*

Bargain and sale.

528. The conveyance of corporeal hereditaments by feoffment with livery of seisin was inconvenient in practice (*c*), and was avoided by means of assurances depending for their effect either in whole or in part on the Statute of Uses (*d*). These were a bargain and sale and a lease and release. Under a bargain and sale made for valuable consideration a use was raised in favour of the purchaser, and this was turned by the statute into the legal estate (*e*). But

(*q*) 2 Bl. Com. 326.

(*r*) 29 Car. 2, c. 3, s. 3; and see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 368.

(*s*) If made for valuable consideration, it operates in equity as an agreement to surrender, and can be specifically enforced; see title LANDLORD AND TENANT, Vol. XVIII., p. 385.

(*t*) Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 3. This Act only applies to surrenders in writing and not to surrenders by operation of law, as to which see *Lyon* v. *Reed* (1844), 13 M. & W. 285, 305, 306; *Kingston's (Duchess) Case* (1776), 2 Smith, L. C., 11th ed., 731; *Wallis* v. *Hands*, [1893] 2 Ch. 75; *Knight* v. *Williams*, [1901] 1 Ch. 256; and see titles DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 368, note (*d*); ESTOPPEL, Vol. XIII., p. 375.

(*u*) Co. Litt. 9 a; see note (*t*), p. 161, *ante*; and see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 361.

(*v*) 2 Bl. Com. 317.

(*a*) (1705) 4 & 5 Anne, c. 3, s. 9; see *Horn* v. *Beard*, [1912] 3 K. B. 181; and title LANDLORD AND TENANT, Vol. XVIII., p. 335.

(*b*) 1 Preston, Abstracts of Titles, 85; Challis, Law of Real Property, 3rd ed., p. 382. As to lease and release, and bargain and sale, see the text, *infra*.

(*c*) See 4 Cru. Dig. 45.

(*d*) 27 Hen. 8, c. 10; see pp. 278 *et seq.*, *ante*.

(*e*) The bargain first vests the use, and then the statute vests the possession (*Eustace* v. *Scawen* (1624), Cro. Jac. 696; 2 Bl. Com. 338; Challis, Law of Real Property, 3rd ed., pp. 419 *et seq.*; and as to the effect of a nominal consideration, see *ibid.*, p. 420. A bargain and sale might also be made under a common law power created by a direction in a will to the executors to sell: the conveyance took effect as an executory devise,

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the bargain and sale, if passing a freehold interest, was subject to the statutory requirement of enrolment within six months (*f*).

Lease and release.

529. The omission to include leasehold interests in the Statute of Inrolments (*g*) was the origin of the assurance which until 1841 was the common mode of conveying corporeal hereditaments (*h*). A bargain and sale of a lease for a year operated under the Statute of Uses (*i*) to place the purchaser in what was deemed to be actual possession, and, being thus in possession, he was capable of taking a release of the reversion in fee simple, which at once operated to enlarge his term of a year into the fee simple. This was the form of assurance known as a lease and release (*j*).

Modern deed of grant.

530. It is now provided by statute that all corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery (*k*). Hence a deed is now the usual mode of conveying all hereditaments, whether corporeal or incorporeal. But the word "grant," though appropriate for conveying freehold interests, is not necessary (*l*), and the word "convey" is equally effectual (*m*). A deed operating under this statutory provision has the same effect as the lease and release formerly had; hence it places the grantee in actual seisin of the land (*n*).

and livery of seisin was not necessary (Williams, Law of Real Property, 21st ed., pp. 398, n.; Challis, Law of Real Property, 3rd ed., p. 383).

(*f*) Stat. (1535—6) 27 Hen. 8, c. 16 (sometimes referred to as the "Statute of Inrolments"). As to enrolment of a bargain and sale, see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 364. A covenant to stand seised also raised a use and operated under the statute to vest the legal estate in the covenantee; but it was restricted to the consideration of marriage or near relationship; see p. 282, *ante*; 2 Bl. Com. 338.

(*g*) Stat. (1535—6) 27 Hen. 8, c. 16; see note (*f*), *supra*.

(*h*) By stat. (1841) 4 & 5 Vict. c. 21, a release was made as effectual as a lease and release; and by stat. (1844) 7 & 8 Vict. c. 76, which was in operation from the 31st December, 1844, to the 1st October, 1845, freehold lands might be conveyed by deed without livery of seisin. This statute was repealed by the Real Property Act, 1845 (8 & 9 Vict. c. 106).

(*i*) 27 Hen. 8, c. 10; see pp. 278 *et seq.*, *ante*.

(*j*) 2 Bl. Com. 339. As to the effect of a release to a lessee for years, see p. 292, *ante*. The same form of assurance could be employed without recourse to the Statute of Uses (27 Hen. 8, c. 10), provided the purchaser entered under the lease, and it was sometimes employed in conveyances by corporations, who could not be seised to a use (Challis, Law of Real Property, 3rd ed., p. 381; see p. 274, *ante*); but the ordinary mode avoided the necessity of entry. The assurance by lease and release depended for its effect, as to the lease, on the Statute of Uses (27 Hen. 8, c. 10), and, as to the release, on the common law (Challis, Law of Real Property, 3rd ed., p. 380).

(*k*) Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 2; and see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 362, note (*a*).

(*l*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 49.

(*m*) And other words, if they show the intent of the conveying party, are effectual; thus, words of appointment (*Shove* v. *Pincke* (1793), 5 Term Rep. 124), and bargain and sale (*Haggerston* v. *Hanbury* (1826), 5 B. & C. 101), where they could not have their primary effect, have been held to operate as words of grant.

(*n*) *Copestake* v. *Hoper*, [1908] 2 Ch. 10, C. A.; Challis, Law of Real Property, 3rd ed., pp. 415 *et seq.*

SUB-SECT. 2.—*Exchange.*

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531. An exchange (*o*) of corporeal or incorporeal hereditaments can be effected by an assurance operating at common law, by mutual conveyance, or by order of the Board of Agriculture and Fisheries. An exchange at common law did not require livery of seisin, and it could be made by parol, provided the exchange was of corporeal hereditaments in the same county, otherwise it had to be made by deed (*p*). An exchange is now void at law unless made by deed (*q*). Exchanges operating at common law at the present time do not occur in practice, except occasionally on an informal straightening of boundaries followed by immediate possession (*r*).

Exchange at common law.

532. An exchange effected by mutual conveyance depends entirely upon the arrangement between the parties. Each party is in the position both of vendor and purchaser, and each must make a title to the property he is giving up, and investigate the title to the property which he is taking; and each gives to the other covenants for title, either express or implied, appropriate to the character in which he conveys (*s*). It follows from the nature of the transaction that, to the extent to which each is absolute owner, there is no restriction on the amount of or interest in the properties exchanged, and any necessary payment can be agreed upon by way of equality of exchange. When the parties or one of them are or is entitled only for a limited interest, the exchange is usually effected under the powers of exchange conferred by the Settled Land Acts (*t*),

Exchange by mutual conveyance.

(*o*) The subject of partition is dealt with elsewhere; see title PARTITION, Vol. XXI., pp. 809 *et seq.*

(*p*) Littleton's Tenures, s. 62; Co. Litt 51 b.

(*q*) Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 3; and see title DEEDS AND OTHER INSTRUMENTS, Vol. X., pp. 367, 368. The requirement of writing was introduced by the Statute of Frauds (29 Car. 2, c. 4), s. 1. But an exchange completed by possession on both sides would be effective in equity; see *Brown* v. *Patterson* (1899), *Times*, 22nd February; and compare *Morphett* v. *Jones* (1818), 1 Swan. 172, 181; *Pain* v. *Coombes* (1857), 1 De G. & J. 34; *Maddison* v. *Alderson* (1883), 8 App. Cas. 467, 475; *Hodson* v. *Heuland*, [1896] 2 Ch. 428.

(*r*) Other requirements of a common law exchange were: (1) that the estates exchanged should be equal in interest, *e.g.*, fee simple for fee simple, term of years for the same term; (2) that the word "exchange" should be used; (3) that there should be entry by each party during their joint lives (Co. Litt. 51 b; 2 Bl. Com. 323); and (4) that the exchange should be between one person or set of persons on one side and another person or set of persons on the other; there could not be a triangular exchange (*Eton College* (*Provost*) v. *Winchester* (*Bishop*) (1774), 3 Wils. 483). Moreover, on a common law exchange, mutual warranties of title were implied with rights of re-entry in case of eviction (2 Bl. Com. 300, 323); hence the exchange could not be safely effected without investigation of title on both sides. In this respect the effect of a common law exchange was altered by the Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 4, which provided that an exchange made after 1st October, 1845, should not imply any condition in law. As to exchanges generally, see Shep. Touch (ed. 1821), ch. xvi.; 4 Cru. Dig., tit. 32, c. 6, 20.

(*s*) As to implied covenants for title, see Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 7; title SALE OF LAND; compare *Bartram* v. *Whichcote* (1833), 6 Sim. 86, 92.

(*t*) See Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 3 (iii.), 17 (i.), 21 (iv.), 24, 45; and see title SETTLEMENTS. The statutory power (see Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 4) authorises an exchange

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or by the settlement under which the limited interest arises (*u*). The exchange can be effected either by one document, in which each of the parties is a conveying party (*a*), or by separate deeds (*b*). The latter plan gives each party the advantage of having the deed relating to the property which he takes.

Exchange by order of the Board of Agriculture and Fisheries.

533. The Board of Agriculture and Fisheries can effect exchanges of lands under statutory powers (*c*). For such purposes the word "land" includes incorporeal as well as corporeal hereditaments, and any undivided share therein (*d*); and, by virtue of such powers, freehold, copyhold, or customary land (*e*), undivided shares in land or other subject-matter of exchange (*f*), land held by the same person under different titles (*g*), and, generally, easements and other incorporeal rights and hereditaments (*h*), may be exchanged. On an exchange, mines and minerals and rights incidental thereto, and also rights of way and other easements, can be reserved (*i*).

Parties who may apply for an order.

534. The persons who may apply for an order of the Board are the persons in actual possession or enjoyment of the land or right in question, or in receipt of the rents and profits; but application cannot be made by lessees for lives or years at a rent of not less than two-thirds of the clear yearly value, or lessees for a term not originally

of easements created *de novo* (*Re Bracken's Settlement*, [1903] 2 Ch. 265); and a trustee, or other person authorised, may, with the sanction of the court, reserve or except minerals from the land exchanged (Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 44; Trustee Act, 1893, Amendment Act, 1894 (57 & 58 Vict. c. 10), s. 3).

(*u*) See titles POWERS, Vol. XXIII., p. 74; SETTLEMENTS.

(*a*) For a form, see Encyclopædia of Forms and Precedents, Vol. V., p. 587.

(*b*) For a form, see *ibid.*, p. 589.

(*c*) *I.e.*, Under the Inclosure Acts, 1845–1899 (see title COMMONS AND RIGHTS OF COMMON, Vol. IV., p. 541, note (*t*)). This power was first conferred on the Inclosure Commissioners (Inclosure Act, 1845 (8 & 9 Vict. c. 118), ss. 2, 147). As to the devolution of their powers on the Board of Agriculture and Fisheries, see title COMMONS AND RIGHTS OF COMMON, Vol. IV., p. 535. The power is exercisable in respect of lands not subject to be inclosed under the Inclosure Acts, or of lands subject to be so inclosed, whether proceedings for an inclosure are pending or not (Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 147; Inclosure Act, 1854 (17 & 18 Vict. c. 97), s. 1). It has, therefore, nothing to do with inclosure. An exchange in connection with inclosure can be effected by the valuer conducting the inclosure under the Inclosure Act, 1845 (8 & 9 Vict. c. 118), ss. 90—92; see title COMMONS AND RIGHTS OF COMMON, Vol. IV., p. 580. As to the exchange of recreation allotments, see *ibid.*, p. 592.

(*d*) Inclosure Act, 1854 (17 & 18 Vict. c. 97), s. 3; compare p. 157, *ante*.

(*e*) Inclosure Act, 1846 (9 & 10 Vict. c. 70), s. 9.

(*f*) Inclosure Act, 1854 (17 & 18 Vict. c. 97), s. 2.

(*g*) Inclosure Act, 1849 (12 & 13 Vict. c. 83), s. 11.

(*h*) *Ibid.*, s. 7. In general, the powers of the Board of Agriculture and Fisheries to effect partition and exchanges arise under the same statutes, and affect the same subject-matter, and are exercisable in the same way; and are stated in detail in title PARTITION, Vol. XXI., pp. 824 *et seq.* As to a mixed exchange and partition, see *ibid.*, p. 833. As to the exchange of land which has been allotted for a public or parochial purpose, and is no longer convenient or suitable, see Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 149; Inclosure Act, 1852 (15 & 16 Vict. c. 79), s. 21. As to the exchange of glebe lands for other lands, see Tithe Act, 1842 (5 & 6 Vict. c. 54), s. 5; Tithe Act, 1846 (9 & 10 Vict. c. 73), s. 22; Tithe Act, 1878 (41 & 42 Vict. c. 42), s. 7; and see title ECCLESIASTICAL LAW, Vol. XI., p. 747, note (*a*).

(*i*) Inclosure Act, 1847 (10 & 11 Vict. c. 111), s. 4.

exceeding fourteen years, or tenants from year to year or at will. When any such lessees or tenants are in possession, application can be made by the reversioner, and the exchange does not affect the lessees or tenants; these remain in possession of their original lands; but, where the land is held on lease for lives or for a term originally exceeding fourteen years, and the lease reserves a rent less than two-thirds of the clear yearly value, the application must be made by the lessor and lessee jointly, and the exchange affects the lessee as well as the lessor. Consequently, both the leasehold and the reversionary interest are shifted from the lands given up to those received in exchange (*k*).

Inequality in value.

535. An exchange cannot be ordered where the two properties are not equal in value and the deficiency in value, in the opinion of the Board, exceeds one-eighth of the less valuable property; but to the extent of such deficiency compensation can be given by means of a rentcharge, of such amount as the Board thinks just, to be charged on the more valuable property, but not by payment of a lump sum (*l*).

Valuation and order.

536. Upon an application being made for an exchange, the Board requires a valuation of the properties to be made by a competent valuer, who must not be the agent of or connected with either of the parties, and it is a condition of the exchange that the Board shall consider it to be beneficial to the parties (*m*). If the Board considers the exchange beneficial, and the proposed terms just and reasonable, an order of exchange will be made (*n*), and such order is not liable to be impeached by reason of any defect of title of the applicants. The land taken is held upon the same uses and trusts, and subject to the same conditions, charges, and incumbrances, as the land given in exchange (*o*).

(*k*) Inclosure Act, 1845 (8 & 9 Vict. c. 118), ss. 16, 147; and, as to the persons who may apply, see, further, title PARTITION, Vol. XXI., p. 826. Railway and other public companies may apply (Inclosure Act, 1857 (20 & 21 Vict. c. 31), s. 4).

(*l*) Inclosure Act, 1857 (20 & 21 Vict. c. 31), ss. 6, 8; and see title PARTITION, Vol. XXI., p. 828.

(*m*) Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 147; and, as to procedure on the application, see title PARTITION, Vol. XXI., p. 829. Instructions relating to exchanges are issued by the Board of Agriculture and Fisheries; see Encyclopædia of Forms and Precedents, Vol. V., p. 573; and, for forms of application, valuation, and order, see *ibid.*, pp. 601 *et seq.*

(*n*) In certain cases the consent of a third person is necessary: *e.g.*, of the bishop and patron when land is held in right of an ecclesiastical benefice (Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 147); of the lord of the manor on the exchange of copyhold land, but the steward may consent in writing on behalf of the lord (Inclosure Act, 1846 (9 & 10 Vict. c. 70), ss. 9, 10; Inclosure Act, 1847 (10 & 11 Vict. c. 111), s. 6; and see title COPYHOLDS, Vol. VIII., p. 84).

(*o*) Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 147. Gavelkind lands (see pp. 151 *et seq.*, *ante*) can be exchanged for lands held in common socage (*Minet* v. *Leman* (1855), 7 De G. M. & G. 340, C. A.). As to the effect of an exchange of copyhold lands, or of copyhold for freehold, see Inclosure Act, 1846 (9 & 10 Vict. c. 70), s. 9; Inclosure Act, 1847 (10 & 11 Vict. c. 111), s. 6; and see title COPYHOLDS, Vol. VIII., p. 86, note (*m*). Certain charges and incidents of tenure do not shift over, but continue to affect the lands previously liable, such as land tax (see *Cooch* v. *Walden* (1877), 46 L. J.

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SUB-SECT. 3.—*Personal Capacity.*

Capacity and incapacity.

537. The owner of property has the power of disposing of it in any manner recognised by law unless he is under some personal incapacity. Such incapacity may arise from infancy (*p*), marriage (*q*), or lunacy (*r*); from the fact that he has forfeited his civil rights by crime (*s*); and because the owner is a corporation (*t*). The power to dispose of property in these various circumstances is fully dealt with elsewhere (*u*), except as regards the disposition of the non-separate property of a married woman (*v*); as regards her separate property she is under no incapacity unless restrained from anticipation (*w*).

SUB-SECT. 4.—*Married Women's Non-separate Estate.*

Husband's interest.

538. The husband can assign or mortgage only his own interest in his wife's non-separate freehold or copyhold estates (*x*), and such interest on his bankruptcy passes to the trustee in bankruptcy (*y*).

Wife's power of disposition by deed acknowledged.

539. A wife by deed acknowledged (*z*) may, with her husband's concurrence (*a*), dispose of lands of any tenure, or of money subject to be invested in the purchase of lands, and may dispose of, release, surrender, or extinguish any estate, whether legal or equitable, in lands of any tenure, or any such money, other than lands, held by copy of court roll (*b*); and she may

(CH.) 639; title LAND TAX, Vol. XVIII., p. 312), tithe rentcharge, chief or quit rents on freehold land, and drainage rates (see Instructions of the Board of Agriculture and Fisheries, paragraph 19; Encyclopædia of Forms and Precedents, Vol. V., p. 578, note (b)). The effect of the title generally shifting to the land taken in exchange is that investigation of title on each side is not required.

(*p*) See title INFANTS AND CHILDREN, Vol. XVII., pp. 78 *et seq.*

(*q*) See title HUSBAND AND WIFE, Vol. XVI., pp. 322 *et seq.*, 376 *et seq.*; and see the text, *infra.*

(*r*) See title LUNATICS AND PERSONS OF UNSOUND MIND, Vol. XIX., pp. 443 *et seq.*

(*s*) See title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 429 *et seq.*; PRISONS, Vol. XXIII., pp. 261 *et seq.*

(*t*) See title CORPORATIONS, Vol. VIII., pp. 375 *et seq.*

(*u*) See notes (*p*), (*r*), (*s*), (*t*), *supra.*

(*v*) See the text, *infra.*

(*w*) See title HUSBAND AND WIFE, Vol. XVI., pp. 377 *et seq.*

(*x*) *Robertson* v. *Norris* (1848), 11 Q. B. 916; Co. Litt. 67 a. Non-separate property is property acquired before 1883 otherwise than for her separate use by a woman married before that date; and see title HUSBAND AND WIFE, Vol. XVI., pp. 322 *et seq.* As to the interest taken by the husband, see p. 183, *ante.*

(*y*) *Re Pyatt, Ex parte Rogers* (1884), 26 Ch. D. 31, C. A.; and see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 156 *et seq.*

(*z*) As to deed acknowledged, see, further, title HUSBAND AND WIFE, Vol. XVI., pp. 381 *et seq.*

(*a*) In certain cases this may be dispensed with; see title HUSBAND AND WIFE, Vol. XVI., p. 384.

(*b*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 77. A beneficial life interest in money invested in land in breach of trust (*Re Durrant and Stoner* (1881), 18 Ch. D. 106, C. A.), or in a trust fund invested on mortgage of land, is an interest in land within the meaning of this provision, and may be disposed of by deed acknowledged (*Miller* v. *Collins*, [1896] 1 Ch. 573, C. A., overruling *Re Newton's Trusts* (1882), 23 Ch. D. 181); but a mere *spes successionis* is not (*Allcard* v. *Walker*, [1896]

disclaim any estate or interest in tenements or hereditaments of any tenure (*c*).

Extent of power of disposition.

540. The power of disposition or disclaimer by deed acknowledged (*d*) extends to any contingent, executory, or future interest, or possibility coupled with an interest, or right of entry immediate or future, in tenements or hereditaments of any tenure (*d*), including an interest in the proceeds of realty held on trust for sale, whether in possession or reversion, and whether the realty is sold or not (*e*).

Necessity for deed acknowledged or customary conveyance.

541. No disposition of a wife's non-separate legal or equitable real estate is, in the absence of fraud, binding on her or her heirs, either at law or in equity, unless it is effected by deed acknowledged, or by a conveyance in accordance with the custom affecting the land, made with the concurrence of the husband and after a separate examination of the wife (*f*).

Voluntary nature of deed acknowledged.

542. A deed must be acknowledged voluntarily (*g*). The court will not grant specific performance of a contract by a married woman to convey her non-separate realty (*h*), or order the husband to procure her to join in a conveyance thereof (*i*). It follows that a

2 Ch. 369). It seems that by special custom a wife may convey her lands by deed, without the concurrence of her husband, provided she is separately examined in accordance with the custom (2 Co. Inst. 673; compare *Anon.* (1579), Dyer, 363 b); but a custom enabling her to dispose of her land by deed with the concurrence of the husband, but without a separate examination, is unreasonable and invalid (*Johnson* v. *Clark*, [1908] 1 Ch. 303). As to the wife's disposition of copyholds, see title COPYHOLDS, Vol. VIII., pp. 96, 108; *Stevens* d. *Wise* v. *Tyrell* (1753), 2 Wils. 1.

(*c*) Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 7; and see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 369.

(*d*) Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 6; *Crofts* v. *Middleton* (1856), 8 De G. M. & G. 192, C. A. (contingent remainder in fee simple or tail); *Ex parte Gill* (1834), 1 Bing. (N. C.) 168 (contingent life interest).

(*e*) *Briggs* v. *Chamberlain* (1853), 11 Hare, 69; *Tuer* v. *Turner* (1855), 20 Beav. 560; *Williams* v. *Cooke* (1863), 4 Giff. 343; and see *Re Jakeman's Trusts* (1883), 23 Ch. D. 344; *Re Caine* (1883), 10 Q. B. D. 284.

(*f*) *Frank* v. *Bollans* (1868), 3 Ch. App. 717 (land settled on trust for sale and division of the proceeds amongst a married woman and others: husband and wife joined in a conveyance to a purchaser, the husband receiving the purchase-money, but the conveyance was not acknowledged: held inoperative as against the wife surviving); *Williams* v. *Walker* (1882), 31 W. R. 120; *Field* v. *Moore*, *Field* v. *Brown* (1855), 7 De G. M. & G. 691, C. A. (a ward of court, who had married without the consent of the court, by order of the court executed a settlement of equitable realty, but did not acknowledge the deed: held, that her heir was not bound by the settlement). A wife has no power of disposition of such property by will, even with the assent of her husband; see *Dye* v. *Dye* (1884), 13 Q. B. D. 147, C. A.; title HUSBAND AND WIFE, Vol. XVI., p. 323. As to leases of a married woman's non-separate property, see title LANDLORD AND TENANT, Vol. XVIII., p. 355.

(*g*) *Jordan* v. *Jones* (1846), 2 Ph. 170.

(*h*) *Emery* v. *Wase* (1801), 5 Ves. 846; *Avery* v. *Griffin* (1868), L. R. 6 Eq. 606 (wife one of several devisees of land on trust for sale); but see the Married Women's Property Act, 1907 (7 Edw. 7, c. 18), s. 1, which applies to the case of a married woman who is a trustee; and see title HUSBAND AND WIFE, Vol. XVI., p. 380, note (*f*).

(*i*) *Martin* v. *Mitchell* (1820), 2 Jac. & W. 413, 425; *Frederick* v. *Coxwell* (1829), 3 Y. & J. 514.

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contract by husband and wife in regard to such property, unless made by deed acknowledged, does not bind the property, nor affect the title of the wife, even in equity (*k*).

Remedies of purchaser on wife's refusal to convey.

Where husband and wife contract for the sale of the wife's realty, the purchaser being aware that it belongs to the wife, and she refuses to convey, the purchaser is not entitled to compel the husband to convey his interest in the property at an abated price (*l*); but, if the husband enters into an agreement for sale, and the purchaser believes the property to be his, he is entitled to a conveyance of the interest of the husband, with compensation in respect of the wife's interest (*m*).

Effect of wife's fraud.

543. If a married woman is guilty of fraud in dealing with her property, she will be precluded from setting up her title against the person defrauded (*n*), and will be liable to indemnify him out of any property of which she has power to dispose (*o*). But a mere refusal to fulfil a contract by which she is not bound is not deemed to be a fraud for this purpose (*p*).

Husband's power of disposition.

544. The husband alone may dispose of his wife's non-separate chattels real by act *inter vivos* (*q*), but he cannot, by a testamentary disposition, defeat her right by survivorship, although, if he bequeaths them by a will made during her lifetime, the bequest will take effect

(*k*) *Cahill* v. *Cahill* (1883), 8 App. Cas. 420: *Nicholl* v. *Jones* (1866), L. R. 3 Eq. 696 (a probate suit was compromised and the husband signed the agreement: held, that although the wife adopted and acted on the agreement, it was not enforceable against her, the other parties being aware that she was a married woman); *Williams* v. *Walker* (1882), 31 W. R. 120 (the wife agreed with her husband that, if he would pay off certain incumbrances and provide for the management and repair of the property, she would convey the fee to him absolutely: the husband carried out the terms of the agreement, but the wife died before conveying the property to him: held, that the wife's heir was entitled as against the husband).

(*l*) *Castle* v. *Wilkinson* (1870), 5 Ch. App. 534.

(*m*) *Barnes* v. *Wood* (1869), L. R. 8 Eq. 424 (husband entitled to an estate *pur autre vie*, with remainder to the wife in fee; the husband agreed to sell the fee, the purchaser not knowing that he had only a limited interest: A., with notice of the contract, took a conveyance by deed acknowledged from the husband and wife: held, that the original purchaser from the husband was entitled as against A. to a conveyance of the husband's interest, with compensation in respect of the interest of the wife). As to a married woman binding her non-separate property by election, see title EQUITY, Vol. XIII., p. 127.

(*n*) *Savage* v. *Foster* (1723), 9 Mod. Rep. 35 (failure to give notice of her title to purchaser for value); *Sharp* v. *Foy* (1868), 4 Ch. App. 35 (fraudulent concealment of settlement from mortgagee); *Barrow* v. *Barrow* (1858), 4 K. & J. 409; *Williams* v. *Cooke* (1863), 4 Giff. 343; *Cahill* v. *Cahill*, *supra*; and see titles EQUITY, Vol. XIII., p. 168, note (*g*); HUSBAND AND WIFE, Vol. XVI., p. 366.

(*o*) *Re M'Intyre's Trustees' Estate* (1888), 21 L. R. Ir. 421 (wife described herself as a *feme sole*, and conveyed by unacknowledged deed: held, that though the fraud did not validate the unacknowledged deed, the purchaser was entitled to be indemnified out of any property within her power of disposition).

(*p*) *Cahill* v. *Cahill*, *supra*.

(*q*) Co. Litt. 46 b, 351 a; and, as to underleases, see title LANDLORD AND TENANT, Vol. XVIII., p. 356.

in the event of his surviving her (*r*). An assignment by the husband defeats the wife's right by survivorship, though made without consideration (*s*). An agreement for valuable consideration, or a covenant by the husband to dispose of his wife's term of years or part of it, is a good disposition in equity so as to bind the wife surviving (*t*).

SUB-SECT. 5.—*Form and Contents of Assurance.*

Form and contents.

545. An assurance of real property follows the ordinary form of an indenture. It contains the date and parties, the recitals showing the title to the property conveyed and the object of the conveyance, the receipt clause, the actual grant, the description of the property conveyed, and the limitation of the estate taken by the grantee (*a*). In addition there are covenants for title which were formerly express, but are now usually implied from the use of the appropriate statutory words (*b*), any special covenants required by the nature of the restriction, such as covenants with respect to the user of the property (*c*), and, when all the title deeds are not handed over, there is an acknowledgment of the right to production and delivery of copies, and, save in the case of grantors who are trustees or mortgagees (*d*), an undertaking for safe custody (*e*).

SUB-SECT. 6.—*Registration of Deeds* (*f*).

(i.) *Middlesex.*

The Middlesex Deeds Registry.

546. The Middlesex Deeds Registry was established in 1708 (*g*). It has been transferred to the Land Registry Office, and now forms part of that Office, and is conducted by the Registrar (*h*).

(*r*) Co. Litt. 351 a; 2 Bl Com. 434.

(*s*) *Carteret* (*Lord*) v. *Paschal* (1733), 3 P. Wms. 197, 200; cited 4 Vin. Abr. 57 pl. 20.

(*t*) *Steed* v. *Cragh* (1723) 9 Mod. Rep. 43; *Druce* v. *Denison* (1801), 6 Ves. 385. It seems that where the husband takes a new lease so as to operate as a surrender by operation of law, that is a disposition which binds the wife (2 Roll. Abr. 495 pl 8; *Downing* v. *Seymour* (1602), Cro. Eliz. 911).

(*a*) As to the formal parts of a deed, see title DEEDS AND OTHER INSTRUMENTS, Vol. X., pp. 381 *et seq.*; as to recitals, *ibid.*, pp. 459 *et seq.*; as to the receipt clause, *ibid.*, p. 464; as to the parcels, *ibid.*, pp. 465 *et seq.*; and as to the limitation to the grantee, *ibid.*, pp. 473 *et seq.*; and, generally, see Encyclopædia of Forms and Precedents, Vol. XII., pp. 128 *et seq.*

(*b*) Covenants for title vary according to the character in which the vendor conveys, whether as beneficial owner, mortgagee or trustee, or settlor. As to the covenants implied by the use of these words, see Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 7; and as to such covenants and also express covenants, see titles DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 481; MORTGAGE, Vol. XXI., p. 123; SALE OF LAND; SETTLEMENTS; TRUSTS AND TRUSTEES. As to the construction of covenants for title, see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 483; and, where there is a known defect of title, see *ibid.*, pp. 461, note (*s*), 482, note (*d*). As to covenants for title generally, see Rawle, Law of Covenants for Title, 5th ed., 1887. As to the old doctrine of warranty, see Littleton's Tenures, ss. 697 *et seq.*, and Coke's Commentary.

(*c*) See titles EQUITY, Vol. XIII., p. 100; SALE OF LAND.

(*d*) See Encyclopædia of Forms and Precedents, Vol. XII., p. 666.

(*e*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 9.

(*f*), (*g*), (*h*). For notes (*f*), (*g*), (*h*), see next page.

SECT. 2.
Transfer by Assurance.

Instruments which may be registered.

547. All deeds, conveyances, and wills, whereby any lands or hereditaments in Middlesex (*i*) may be affected at law or in equity, may be registered (*k*). This provision includes all instruments in writing, whether under seal or not, which affect the land (*l*), except instruments affecting copyhold estates (*m*), leases at a rack-rent, and leases for not exceeding twenty-one years, where the actual possession goes with the lease (*n*); but it does not apply to liens or charges created without writing (*o*). Consequently, all assurances in writing of lands, whether by way of sale, mortgage, or settlement, and all charges created or evidenced by writing, and all leases, save those just mentioned, may be registered (*p*). Assurances relating to Crown lands need not be registered (*q*).

Mode of registration.

548. The registration is effected by registering a memorial of the instrument (*r*). The memorial must be in writing under the

(*f*) The registration of assurances is designed to give publicity to dealings with land, and thus prevent frauds upon purchasers and mortgagees. It is thus based on the same principle as the ancient feoffment with livery of seisin (see p. 290, *ante*). Such registration has, however, been confined in its operation to Middlesex, Yorkshire, and the Bedford Level; see pp. 304, 307, *post*. Registration of land under the Land Transfer Acts (see pp. 308 *et seq.*, *post*) renders unnecessary the registration of deeds in the Middlesex and Yorkshire Registries.

(*g*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 127. By the Middlesex Registry Act, 1708 (7 Anne, c. 20).

(*h*) Land Registry (Middlesex Deeds) Act, 1891 (54 & 55 Vict. c. 64).

(*i*) The Act does not apply to the City of London (Sugden, Vendors and Purchasers, 14th ed., p. 732).

(*k*) Middlesex Registry Act, 1708 (7 Anne, c. 20), s. 1. As to registration of leases, see title LANDLORD AND TENANT, Vol. XVIII., pp. 400 *et seq.* As to registration of mortgages, see title MORTGAGE, Vol. XXI., pp. 86 *et seq.* As to registration of wills, see titles SALE OF LAND; WILLS.

(*l*) Such as an appointment under a power (*Scarfton* v. *Quincey* (1752), 2 Ves. Sen. 413); a marriage settlement (*Elsey* v. *Lutyens* (1850), 8 Hare, 159); and a memorandum in writing creating an equitable charge (*Neve* v. *Pennell*, *Hunt* v. *Neve* (1863), 2 Hem. & M. 170); see title MORTGAGE, Vol. XXI., p. 86. But not an assignment of a legacy charged on land, which is an assignment of money only (*Malcolm* v. *Charlesworth* (1836), 1 Keen, 63); or of the proceeds of sale of real estate held on trust for sale (*Arden* v. *Arden* (1885), 29 Ch. D. 702).

(*m*) A deed of enfranchisement of copyholds must be registered (*R.* v. *Registrar of Deeds for County of Middlesex* (1888), 21 Q. B. D. 555, C. A.).

(*n*) Middlesex Registry Act, 1708 (7 Anne, c. 20), s. 18; and see, further, title LANDLORD AND TENANT, Vol. XVIII., p. 401, note (*h*).

(*o*) Such as a charge by deposit without memorandum (*Sumpter* v. *Cooper* (1831), 2 B. & Ad. 223); or the lien of an unpaid vendor; see *Ketilewell* v. *Watson* (1882), 21 Ch. D. 685; (1884) 26 Ch. D. 501, C. A. (a case on the repealed Yorkshire Registries Acts); and see titles LIEN, Vol. XIX., p. 31; MORTGAGE, Vol. XXI., pp. 86, 87.

(*p*) See titles LANDLORD AND TENANT, Vol. XVIII., p. 401; MORTGAGE, Vol. XXI., p. 86; SALE OF LAND.

(*q*) Crown Lands Act, 1853 (16 & 17 Vict. c. 56), s. 6; see title CONSTITUTIONAL LAW, Vol. VII., p. 174.

(*r*) Middlesex Registry Act, 1708 (7 Anne, c. 20), s. 1. The memorial must be impressed with an Inland Revenue stamp of 2*s.* 6*d.* (see Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I., title "Memorial"), except where the instrument registered is subject to a duty less than 2*s.* 6*d.*, in which case it bears the same duty as the instrument, and except where the instrument registered is a will or codicil, in which case no such duty is payable; but in all such cases an adhesive stamp of 5*s.*, obtainable at the Land

hand of one of the grantors or grantees, and must be attested by one witness. Such witness must be a witness or one of the witnesses (if any) to the original instrument (*s*), unless at the date of the memorial every such witness is dead, or absent from the United Kingdom, or cannot be found, or some other sufficient cause exists to prevent such attestation. In such case the memorial must be accompanied by a statutory declaration (*t*), stating the reason why the witness to the memorial is not one of the witnesses to the instrument. The memorial must state the date of and parties to the instrument, and must specify, following the description in the instrument, the lands and hereditaments affected and the parishes where they lie. It must contain, or be accompanied by, a copy of any plan on the instrument (*u*).

Index.

549. The index kept at the Land Registry shows the names of the grantors but not of the grantees (*v*). Any person may search it on payment of the prescribed fee, or an official search may be requisitioned and a certificate of the result obtained (*a*).

Effect of omission to register.

550. The omission to register an instrument does not invalidate it, but, by reason of such omission, it will be adjudged fraudulent and void against a subsequent purchaser or mortgagee for valuable consideration who registers his assurance (*b*). Hence the effect of the statute is that, as between purchasers or mortgagees for valuable consideration, instruments rank in order of date of

Registry, must be affixed to the memorial. As to stamp duty generally, see title REVENUE, pp. 700 *et seq.*, *post*.

(*s*) But not necessarily a witness to the execution by the grantor (*R.* v. *Registrar of Deeds for County of Middlesex* (1888), 21 Q. B. D. 555, C. A.; and in the case of a will or codicil, the witness to the memorial need not be one of the witnesses to the testamentary instrument.

(*t*) No stamp on such an instrument is required.

(*u*) Land Registry (Middlesex Deeds) Act, 1891 (54 & 55 Vict. c. 64), Sched. I.; Land Registry (Middlesex Deeds) Rules, 1892 (Stat. R. & O. Rev., Vol. VII., Land (Registration), England, p. 128). For form of memorial, see *ibid.*, Schedule; Encyclopædia of Forms and Precedents, Vol. XI., p. 282. As to the erroneous inclusion of a person as a conveying party, see *Mill* v. *Hill* (1852), 3 H. L. Cas. 828; and, as to a memorial attested by a witness to the re-execution of the deed by the grantee, see *Essex* v. *Baugh* (1842), 1 Y. & C. Ch. Cas. 620. Where a conveyance or security is effected by several instruments, it is sufficient if the lands are described in the memorial of one of them, and if the other memorials refer to it (Land Registry (Middlesex Deeds) Act, 1891 (54 & 55 Vict. c. 64), Sched. I. (9)). For further directions as to registration, see *ibid.* (1)—(8).

(*v*) Land Registry (Middlesex Deeds) Rules, 1892, r. 8.

(*a*) *Ibid.*, rr. 9—14.

(*b*) Middlesex Registry Act, 1708 (7 Anne, c. 20), s. 1. To obtain priority the registration of all the deeds in the chain of title must be effected; see *Jack* d. *Rennick* v. *Armstrong* (1819), 1 Hud. & B. 727; *Fury* v. *Smith* (1822), 1 Hud. & B. 735. Wills must be registered in Middlesex within six months of the testator's death (Middlesex Registry Act, 1708 (7 Anne, c. 20), ss. 1, 8); but, if the will has not been registered within that period, an assurance by a devisee, or a person deriving title under him, to a purchaser or mortgagee, if registered before an assurance from the heir-at-law, prevails over the latter (Vendor and Purchaser Act, 1874 (36 & 37 Vict. c. 78), s. 8); and see *Girling* v. *Girling*, [1886] W. N. 18; *Re Cooper*, *Cooper* v. *Vesey* (1882), 20 Ch. D. 611, C. A. (where, however, the assurance by the heir was held to be a forgery).

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registration and not of date of execution. But this is only the *primâ facie* rule, and it does not apply in the following cases:—

Effect of notice of unregistered instrument.

(1) A subsequent purchaser or mortgagee who takes with notice of an earlier unregistered instrument cannot by registration obtain priority over it: the statute is only designed to prevent fraud, and in such case he is not deceived (*c*). But for this purpose there must be actual notice; constructive notice is not sufficient (*d*).

Subsequent purchaser for value without notice.

(2) Registration is not itself notice to subsequent purchasers, nor does it deprive the legal estate of its efficacy. Hence a subsequent purchaser or mortgagee who takes without notice of the registered instrument, and either then or subsequently gets in the legal estate, thereby obtains priority (*e*).

(ii.) *Yorkshire.*

Yorkshire registries.

551. Deed registries are established in Yorkshire: at Northallerton for the North Riding; at Beverley for the East Riding; and at Wakefield for the West Riding. They are maintained by the county authorities within the three ridings respectively (*f*).

Instruments requiring registration.

552. All assurances and wills by which any lands within any of the three ridings are affected may be registered (*g*). For this purpose "assurance" includes generally any conveyance in the ordinary sense of the term, and in particular any assignment, appointment, lease, or settlement made by deed, on a sale, mortgage, demise, or settlement of land, or appointment of a new trustee in respect of land, whether a conveyance in the ordinary sense or not (*h*); also any enlargement of a term into the fee simple (*i*), memorandum of charge, deed of consent to the discharge of a trustee, statutory receipt, private Act, award or order of the Board of Agriculture and Fisheries (*k*), order of a court, including writs of execution and

(*c*) *Le Neve* v. *Le Neve* (1747), Amb. 436; and see title MORTGAGE, Vol. XXI., p. 335. If notice does not exist when the consideration is paid, it is immaterial that it exists at the time of registration (*Elsey* v. *Lutyens* (1850), 8 Hare, 159).

(*d*) *Agra Bank, Ltd.* v. *Barry* (1874), L. R. 7 H. L. 135; and see title EQUITY, Vol. XIII., p. 86, note (*f*).

(*e*) See title MORTGAGE, Vol. XXI., p. 335.

(*f*) Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), s. 31. This Act repealed the earlier Yorkshire Registries Acts, namely, the West Riding Act (stat. (1703) 2 & 3 Anne, c. 4, amended by stats. (1706) 5 Anne, c. 20, and (1707) 6 Anne, c. 35, s. 34); the East Riding Act (stat. (1707) 6 Anne, c. 62); and the North Riding Act (stat. (1734) 8 Geo. 2, c. 6). The system of registration under these statutes was substantially the same as that of the Middlesex Registry; see Elphinstone and Clark on Searches, p. 127.

(*g*) Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), s. 4. "Land" includes land and tenements and hereditaments, corporeal and incorporeal, and houses and other buildings, and also an undivided share in land; compare p. 157, *ante*. As to registration of wills, see title WILLS.

(*h*) Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), s. 3; see *Rodger* v. *Harrison*, [1893] 1 Q. B. 161, C. A.

(*i*) *I.e.*, under the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41); see p. 268, *ante*.

(*k*) In the statute "award or order of the Land Commissioners," but the Board of Agriculture and Fisheries has been substituted for the Commissioners; see note (*c*), p. 297, *ante*.

adjudications in bankruptcy, certificate of appointment of a trustee in bankruptcy, and affidavit of vesting under any Act of Parliament (*l*).

The term does not, however, include a contract under hand only for the sale and purchase of land (*m*).

Liens.

Where a lien on land is claimed in respect of unpaid purchase-money, or by reason of any deposit of title deeds, a memorandum of such lien or charge, signed by the person against whom the charge is claimed, may be registered by any person claiming to be interested therein (*n*); and such memorandum must contain certain particulars prescribed by the statute (*o*).

Instruments exempt from registration.

The above provision does not extend to copyhold hereditaments, nor to any lease not exceeding twenty-one years, or any assignment thereof, where accompanied by actual possession from the making of such lease or assignment (*p*); nor does it extend to assurances of Crown lands which may be enrolled in the Land Revenue Office (*q*).

Mode of registration.

553. The registration is effected, in the case of deeds or other assurances, except private Acts, or memoranda of charges, or affidavits of vesting under a statute, by presenting a memorial for enrolment; in the case of a private Act, by presenting a King's printer's copy or a memorial; and, in the case of a memorandum of charge or an affidavit, by presenting the memorandum or affidavit at full length (*r*).

The memorial must be under seal; and the form is similar to that required in Middlesex (*s*).

(*l*) Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), s. 3. "Mortgage" includes any charge on any land for securing money or money's worth, and any transfer of a mortgage. "Order of a court" means any judgment, decree, writ of execution or sequestration, adjudication in bankruptcy, or other order or process of or issuing from a court of competent jurisdiction, or any order of the Charity Commissioners, whereby any interest in land is or may be affected; and for other definitions, see *ibid.*; and see titles BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 110, 111; EXECUTION, Vol. XIV., p. 70.

(*m*) *Rodger* v. *Harrison*, [1893] 1 Q. B. 161, C. A.

(*n*) Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), s. 7; see *Battison* v. *Hobson*, [1896] 2 Ch. 403; *Manks* v. *Whiteley*, [1912] 1 Ch. 735, C. A.; and see title LIEN, Vol. XIX., p. 31.

(*o*) Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), s. 7. For form of memorandum, see Encyclopædia of Forms and Precedents, Vol. XI., p. 294.

(*p*) Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), s. 28. As to the corresponding provision in the Middlesex Registry Act, 1708 (7 Anne, c. 20), see p. 302, *ante*.

(*q*) Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), s. 30; see p. 305, *ante*.

(*r*) Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), s. 5.

(*s*) *Ibid.*, s. 6, where the matters to be contained in memorials of various classes of documents are specified. As to memorials in Middlesex, see p. 302, *ante*. For forms for use in Yorkshire, see Encyclopædia of Forms and Precedents, Vol. XI., p. 291. The stamp duty on a memorial of a deed is 2*s*. 6*d*., or such lesser duty as is payable on the instrument itself (Stamp Act, 1891 (54 & 55 Vict. c. 39), Schedule "Memorial"); but no duty is payable when the instrument enrolled is a will or codicil. Under the Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), s. 5 (1) (A), (B), the applicant may either register a memorial of a deed, will or other assurance,

SECT. 2. **Transfer by Assurance.**

Inspection of register and searches.

554. Subject to the statutory provisions, and to any rules made thereunder, any person may inspect and search the register and indices, and may take copies thereof or extracts therefrom; or an official search may be requisitioned, and a certificate of the result, under the seal of the registry, obtained. The certificate is receivable in evidence (*t*). Provision is also made for obtaining certified copies of or extracts from the register (*a*); and solicitors, trustees, and other persons in a fiduciary position are protected against any error arising from reliance on certificates of search or certified copies of documents (*b*).

Priority.

555. All assurances entitled to be registered have priority according to the date of registration, and not according to the date of the assurances or of their execution (*c*); and this is not, as in Middlesex, merely the *primâ facie* rule (*d*); it is the absolute rule, save only in the case of fraudulent or voluntary assurances. Thus, a subsequent purchaser or mortgagee who registers first has priority over an earlier unregistered assurance, notwithstanding that he took with actual notice of it (*e*); and a subsequent purchaser or mortgagee who gets in the legal estate does not thereby acquire priority over an earlier registered equitable assurance (*f*). But registration does not give priority in case of fraud; and a person taking without valuable consideration cannot by registering his assurance obtain any further priority or protection than would belong to his grantor (*g*). Moreover, registration itself is not notice to others of the registered assurance (*h*); hence, further advances made under a registered mortgage originally framed to cover them have priority over a subsequent registered mortgage, unless, at the time when they were made, the earlier mortgagee had

or of a private Act, or may register such deed, will or other assurance, at full length, or a King's printer's copy of such Act. If a deed or copy of a will is enrolled at full length, no stamp is required. Under *ibid.*, s. 5 (1) (c), a memorandum of charge, caveat (see the text, *infra*), notice, or affidavit must be enrolled at full length. The stamp duty on a memorandum of lien or charge is 6*d.* per cent. *ad valorem* on the amount due, and, on an affidavit of intestacy, 2*s.* 6*d.* No stamp is required on a caveat. For fees payable on registration, and for copies and searches, see Encyclopædia of Forms and Precedents, Vol. XI., p. 278.

(*t*) Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), ss. 19, 20.

(*a*) *Ibid.*, s. 22.

(*b*) *Ibid.*, s. 23.

(*c*) *Ibid.*, s. 14. In the case of a vendor's lien or a charge by deposit of deeds, a memorandum can be registered: hence it must be registered in order to secure priority (*ibid.*, s. 7; *Battison* v. *Hobson*, [1896] 2 Ch. 403).

(*d*) See p. 304, *ante*.

(*e*) Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), s. 14, which specifie "actual or constructive notice"; but if actual notice does not postpone the subsequent incumbrancer who registers first, clearly constructive notice cannot.

(*f*) *Ibid.*, s. 16. This means that tacking is not allowed; see title MORTGAGE, Vol. XXI., p. 337.

(*g*) Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), s. 14.

(*h*) *Ibid.*, s. 15, made registration actual notice; but this provision interfered with banking advances, and it was immediately repealed (Yorkshire Registries Amendment Act, 1885 (48 & 49 Vict. c. 26), s. 5); see *Manks* v. *Whiteley*, [1912] 1 Ch. 735, C. A.

received notice of the subsequent mortgage otherwise than by the mere registration thereof (*i*). The result is that purchasers and mortgagees must search the register before paying their money, save only where a further advance is being made under a registered mortgage which already covers it.

Caveat.

556. A person interested in land in any of the three Ridings can register a caveat in favour of any person named therein, specifying the time for which it is to remain in force. An assurance made within such time by the person registering the caveat in favour of the person named therein has priority as though it had been registered upon the date on which the caveat was registered (*k*). Thus, a vendor or mortgagor can by registering a caveat guarantee the purchaser or mortgagee against further dealings with the property to his prejudice.

(iii.) *Bedford Level.*

Purposes of registration.

557. No lease (*l*), grant, or conveyance of, or charge out of or upon lands comprised in certain parts (*m*) of the Bedford Level (*n*) is valid for the purpose of entitling the grantee to the privileges conferred on owners of lands within the Bedford Level (*o*), and for other statutory (*p*) purposes, save from the time that it is entered on the Bedford Level Register (*q*). Such entry, indorsed upon the

(*i*) See title MORTGAGE, Vol. XXI., pp. 337, 338.

(*k*) Yorkshire Registries Amendment Act, 1885 (48 & 49 Vict. c. 26), s. 3. As to the form of such caveat, see *ibid.*; Encyclopædia of Forms and Precedents, Vol. XI., p. 295. As to registration of caveats, see Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), s. 5; and see note (*s*), p. 305, *ante*.

(*l*) As to registration of leases of lands in the Bedford Level, see title LANDLORD AND TENANT, Vol. XVIII., pp. 401, 402. As to the effect of not registering a lease, see *ibid.*, p. 401, note (*l*).

(*m*) For registration purposes the operation of stat. (1664) 15 Car. 2, c. 17 (see the text, *infra*) has been restricted by the North Level Act, 1857 (20 & 21 Vict. c. cix.), s. 45, and the Middle Level Act, 1862 (25 & 26 Vict. c. clxxxviii.), s. 10, which exempt lands in the North and Middle Levels, and, by the latter provision, registration of documents in the Registry only applies to "Adventurers' Land" situated within the South Level, being those parts of the fens in the counties of Norfolk, Suffolk, the Isle of Ely, and Cambridge which lie on the east of the old Bedford Level and the river Ouse.

(*n*) As to the areas known as the "Bedford Level" and "Adventurers' Land," and the "Great Level of the Fens," of which the Bedford Level formed a part, see Wells, History of the Bedford Level (London, 1830 ed.); and see Encyclopædia of Forms and Precedents, Vol. XI., pp. 278, 279.

(*o*) By stat. (1664) 15 Car. 2, c. 17. An unregistered assurance is valid for all purposes and, apparently, against all parties, except for the purposes referred to in the text, *supra* (*Willis* v. *Brown* (1839), 10 Sim. 127). An omission to register an assurance does not avoid it as between the parties thereto; it only renders it liable to be postponed to a subsequent assurance which is registered (*Hodson* v. *Sharpe* (1808), 10 East, 350).

(*p*) *I.e.*, the purposes of stat. (1664) 15 Car. 2, c. 17; see note (*o*), *supra*; and see also *R.* v. *Bedford Level* (*Corporation*) (1805), 6 East, 356; *Childers* v. *Childers* (1857), 1 De G. & J. 483.

(*q*) Stat. (1664) 15 Car. 2, c. 17, s. 8. The Register is kept at the office of the Bedford Level Corporation, "The Fen House," Ely. As to the corporation, see *ibid.*, s. 2. As to inspection of the register, regulations governing registration, and proof of succession on intestacy or under

SECT. 2. Transfer by Assurance.

registered instrument, is as effectual as if the original register were produced (*r*).

SECT. 3.—*Transfer by Registration of Title.*

SUB-SECT. 1.—*The Register.*

Land registry.

558. The office of Land Registry is established under the Land Transfer Acts, 1875 and 1897 (*s*), for the purpose of registering the title to land, and enabling land to be transferred and mortgaged by registered disposition (*t*).

Compulsory area.

In general, registration is voluntary, but in any county or part of a county where registration of title is compulsory on sale, a person cannot acquire the legal estate, under a conveyance on sale, of freehold land (*u*), or, in certain cases, under an assignment on sale or lease of leasehold land (*v*), unless he is registered as proprietor. At present compulsory registration is confined to the County of London (*w*).

devise, and, as to fees payable for searches, registration, entry of plans, certificate of enrolment, copies or extracts, and abstracts of title, see Encyclopædia of Forms and Precedents, Vol. XI., pp. 280, 281.

(*r*) Stat. (1664) 15 Car. 2, c. 17, s. 8.

(*s*) 38 & 39 Vict. c. 87; 60 & 61 Vict. c. 65. The office is in Lincoln's Inn Fields, London. Provision is made for the establishment of district registries (Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 118—122; Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 22 (8)); but in practice registration is almost confined to the compulsory area, and the necessity for district registries has not arisen. Registration of title was introduced by Lord WESTBURY in the Land Registry Act, 1862 (25 & 26 Vict. c. 53). Under this Act registration might be made either with or without an indefeasible title. The system did not meet with success, and it was replaced by the Land Transfer Act, 1875 (38 & 39 Vict. c. 87). This stopped further registrations under Lord Westbury's Act (Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 125; as to re-registration under the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), see *ibid.*, s. 126; Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.), but registration under the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), was little used until supplemented, as regards London, by compulsion under the Land Transfer Act, 1897 (60 & 61 Vict. c. 65). The whole system of registration of title is still the subject of discussion (see Report of 1911 of the Royal Commission on the Land Transfer Acts), and, if it is continued and extended, considerable modifications in the present system will probably be made.

(*t*) As to specific performance in regard to registered land, see Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 93, 94, which empower the court to summon before it all or any parties who have registered estates or rights or have entered notices, cautions or inhibitions against the registered title, and provide for the costs of parties so summoned.

(*u*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 20 (1). As to "conveyance on sale," see *ibid.*, s. 20 (2). As to the effect of compulsory registration, see *Capital and Counties Bank, Ltd.* v. *Rhodes*, [1903] 2 Ch. 631, 657, C. A.

(*v*) *I.e.*, an assignment on sale of a lease or underlease having at least forty years to run, or two lives yet to fall in, and a grant of a lease or underlease for forty years or more, or for two or more lives, if capable of registration; see title LANDLORD AND TENANT, Vol. XVIII., p. 402; Land Transfer Rules, 1903, rr. 68—70 (Stat. R. & O. Rev., Vol. VII., Land (Registration), England, p. 44; altered, as regards r. 70, Stat. R. & O., 1908, p. 431).

(*w*) For the Orders in Council making registration compulsory in London, see Brickdale and Sheldon, Land Transfer Acts, 2nd ed., pp. 533—536; for the dates, ranging from the 1st January, 1899, to the 1st November, 1900, when the orders came into operation in different parishes, see *ibid.*, pp. 55

In districts where registration is not compulsory, land can be removed from the register (*x*).

559. Rules for the regulation of the registry, and for carrying the Land Transfer Act, 1897 (*y*), into effect, and as to the fees payable, are made by the Lord Chancellor, with the advice and assistance of a Rule Committee (*z*). Regulation of registry.

The registrar has extensive powers in the conduct of the business of the registry, including power to frame forms and to summon witnesses (*a*), subject in certain cases to appeal to the court (*b*). He is protected in respect of acts *bonâ fide* done in the exercise or supposed exercise of his powers (*c*). The registrar.

560. The register consists of three portions—the property register, the proprietorship register, and the charges register (*d*). The register.

The property register contains the description of the land comprised in each title, with a reference to the filed plan of the land, and any necessary notes relating to the ownership of mines and minerals; to exemption from liabilities and interests which are not incumbrances and do not require registration; and to easements and restrictive covenants for the benefit of the land, and other like matters (*e*). Property register.

—57; and for the procedure for revoking or extending compulsory registration, see the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 20 (4)—(12). Compulsory registration does not extend to incorporeal hereditaments, or to mines and minerals apart from the surface, or to an undivided share of land, or to intermixed freeholds where indistinguishable from land of other tenure, or to corporeal hereditaments parcel of a manor and included in the sale of the manor as such (Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 24 (1)).

(*x*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 17 (1).

(*y*) 60 & 61 Vict. c. 65.

(*z*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 111, 112; Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 22 (2)—(6). The present rules are the Land Transfer Rules, 1903 and 1908; see Encyclopædia of Forms and Precedents, Vol. XVI., pp. 733 *et seq.* As to the fees payable in the registry, see Land Transfer Fee Order, 1908 (Stat. R. & O., 1908, p. 435). As to solicitors' remuneration, see Land Transfer Rules, 1903, r. 336, as altered by Land Transfer Rules, 1908, and Sched. II. to each set of rules; and see title SOLICITORS.

(*a*) As to the registrar and his staff and his powers, see, generally, Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 106—110; Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 22 (1). As to service of notices, see Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 89—92.

(*b*) As to the "court," see Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 114—117; and, as to appeals, see Land Transfer Rules, 1903, rr. 296—312; a new rule (r. 301) being substituted by the Land Transfer Rules, 1908. For a list of matters in which an appeal from the registrar lies, or in which independent application can be made to the court, see Brickdale and Sheldon, Land Transfer Acts, 2nd ed., p. 464.

(*c*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 86.

(*d*) Land Transfer Rules, 1903, r. 2. As to the arrangement of the register and the index map, see *ibid.*, rr. 9, 11, 12. Clerical errors in the register may be corrected by the registrar (*ibid.*, r. 15). As to substantial errors, see *ibid.*, r. 16; and see p. 322, *post.*

(*e*) Land Transfer Rules, 1903, r. 3; and, as to liabilities and interests not requiring registration, see p. 311, *post.* The entries for the register and the plan are drawn and settled by the registrar, and, unless the

SECT. 3. **Transfer by Registration of Title.**

The proprietorship register states the nature of the registered title, the name, address, and description of the registered proprietor, and any cautions, inhibitions, and restrictions affecting his right of disposition (*f*).

Proprietorship register.

Charges register.

The charges register contains incumbrances, including notices of leases and of estates in dower and by the curtesy, and entries relating to covenants, conditions, and other rights adversely affecting the land (*g*).

Inspection of register and official search.

561. The register is not open to public inspection. Only the registered proprietor of a land or charge, and persons authorised by him, or persons interested, are entitled to inspect it; but persons interested in the adjoining land, or any charge thereon, can inspect the property register and the filed plan of any title. An official search can be requisitioned and a certificate of the result obtained (*h*).

Land capable of being registered.

562. Only land which is of freehold tenure, or which is leasehold held under a lease derived either immediately or mediately out of land which is of freehold tenure, can be registered (*i*); and

registrar thinks it unnecessary, approved by the applicant or his solicitor (Land Transfer Rules, 1908, r. 40). As to leasehold land, see *ibid.*, r. 5. The ordnance map, on the largest scale published, is the basis of all registered descriptions of land (Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 14; Land Transfer Rules, 1903, r. 269). The land is described by means of the map, together with such verbal particulars as the applicant for registration may desire, and the registrar (or the court) approves (Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 14). In general, the map indicates general boundaries only (Land Transfer Rules, 1903, r. 274); but, on notice given to the owners and occupiers of adjoining lands, the precise boundaries can be determined and delineated in the plan (*ibid.*, rr. 272, 273); and, as to the plan and description, see, further, *ibid.*, rr. 270, 271, 275—282. Additions to or removals from the land are, where practicable, to be noted in the property register and marked on the filed plan (*ibid.*, r. 4). Where it is proved to the satisfaction of the registrar that the right to mines is vested in the proprietor of the land, a note may be entered on the property register that they are included in the registration (Land Transfer Rules, 1903, r. 213); or, if they are severed, a note that they are excluded (*ibid.*, r. 214).

(*f*) *Ibid.*, r. 6.

(*g*) *Ibid.*, r. 7; and see p. 311, *post.*

(*h*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 104; Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 22 (7); Land Transfer Rules, 1903, rr. 14, 284—295. But the index map and list of pending applications are open to public inspection (*ibid.*, r. 14), and an official search of the index map can be obtained (*ibid.*, r. 283).

(*i*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 2. For this purpose customary freeholds, if admission or any act by the lord is necessary to perfect the title of a purchaser from the customary tenant, are not freehold (*ibid.*). As to customary freeholds, see p. 149, *ante*; as to registration contrary to the provisions of the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 2, see Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.; as to cases where lands of different tenures are intermixed, see Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 67; Land Transfer Rules, 1903, r. 87. For the purposes of the Acts, "land" includes all hereditaments, corporeal and incorporeal (Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 24 (1)); compare p. 157, *ante.* As to the registration of Crown lands and foreshore, see Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 65, 66; Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.; Land Transfer Rules, 1908, r. 22; and see title CONSTITUTIONAL LAW,

leasehold land cannot be registered unless it is held on lease for a life or lives, or determinable on a life or lives, or for a term of years of which more than twenty-one are unexpired at the time of registration (*k*). A term created for mortgage purposes cannot be registered (*l*).

Rights deemed not to be incumbrances and incapable of entry.

563. The register is intended to contain a statement of the existing proprietorship of the land and of the incumbrances upon it (*m*); and, generally speaking, all rights of third persons in respect of the land which are exercisable against the proprietor are incumbrances. But owing to the difficulty of giving an exact representation of all such rights, certain classes of them are deemed not to be incumbrances, and the land is subject to such of these as are for the time being subsisting in relation to it although they are not entered on the register. They include incidents of tenure, death duties, land tax, tithe rentcharge, easements, rights to mines and minerals created before registration, sporting and manorial rights, franchises, and leases or agreements for leases and other tenancies not exceeding twenty-one years; and also rights acquired or in course of being acquired under the Statute of Limitations (*n*).

Registration of restrictive conditions.

A restrictive condition may at any time be registered as annexed

Vol. VII., pp. 113, 177 *et seq.*, 258, note (*a*). As to the registration of special hereditaments, such as advowsons, rents, and mines severed from the surface, see Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 82; Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.; Land Transfer Rules, 1903, rr. 71—76; and as to registration of cellars, flats and undivided shares of land, *ibid.*, rr. 71—77.

(*k*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 11. A lease and a reversionary lease separated by not more than a month, and belonging beneficially to the same person, are treated as one for the purpose of this provision and the rules (Land Transfer Rules, 1903, r. 66).

(*l*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I., altering the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 11.

(*m*) Incumbrances, conditions, and other burdens (including fee farm grants, or other grants reserving rents or services) are entered in the register in accordance with the title produced (Land Transfer Rules, 1908, r. 43).

(*n*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 18, as amended by the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.; and under the Land Transfer Rules, 1903, r. 255, appurtenances are not incumbrances. But exemption from land tax or tithe rentcharge can be noted on the register, if proved to the satisfaction of the registrar (Land Transfer Rules, 1903, r. 212); and it can also be noted that no succession duty is owing on a certificate to that effect from the Inland Revenue Commissioners (*ibid.*; as to registered charges, see Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 83 (8)). Further provision as to death duties is made by the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 13; see Land Transfer Rules, 1903, rr. 208—211. On applications for registration with an absolute title, or to register a transmission, the registrar must inquire as to succession or estate duty; and, if any liability to these exists or is capable of arising, it must be noted on the register; otherwise, save in certain cases under possessory or qualified titles, it does not affect a *bonâ fide* purchaser for full consideration. Rights to mines and minerals acquired after registration (see note (*e*), p. 309, *ante*) must, for safety, be protected by registration (see Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.), and the registrar may enter notice of any of the foregoing liabilities, rights or interests the existence of which is proved to his satisfaction (Land Transfer Act, 1875 (38 & 39 Vict. c. 87) s. 18; Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.; Land Transfer Rules, 1903, r. 215).

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to the land, and the registered proprietor for the time being is deemed to be affected with notice of the condition; but the condition may be modified or discharged by the court on proof that this will be beneficial to the persons principally interested in its enforcement (*o*).

SUB-SECT. 2.—*Who may Apply for Registration.*

Persons entitled to be registered.

564. Any person can apply for registration of freehold land who is entitled for his own benefit, at law or in equity, to an estate in fee simple, whether subject to incumbrances or not; also any person who has contracted to buy for his own benefit such an estate, or who is capable of disposing of such an estate for his own benefit by way of sale (*p*). Similarly, any person can apply for the registration of leasehold land who is entitled for his own benefit, at law or in equity, to leasehold land capable of registration, whether subject to incumbrances or not; and so also may any person who has contracted to buy for his own benefit such leasehold land, or who is capable of disposing of such leasehold land for his own benefit by way of sale (*q*). Several persons entitled for their own benefit, concurrently or successively, to such estates and interests as would make up an estate suitable for registration can be registered as joint proprietors (*r*).

Owners of settled land.

565. Under the foregoing provisions the applicant for registration must be entitled to the land for his own benefit. Provision is also made for registration of settled land and land held on trust for sale. Settled land may, at the option of the tenant for life, be registered either in the name of the tenant for life, or, where there are trustees with power of sale, in the names of the trustees, or, where there is an overriding power of appointment of the fee simple, in the names of the donees of the power (*s*). The rights of the persons beneficially interested must be protected by proper restrictions or inhibitions (*t*). Subject to these, the registered proprietor can exercise his statutory rights of disposition, but otherwise the interests of the persons for

(*o*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 84, as altered by the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.; see Land Transfer Rules, 1903, r. 223; Land Transfer Rules, 1908, r. 20. As to when the court will exercise this power, see *Ground Rent Development Co., Ltd.* v. *West*, [1902] 1 Ch. 674. As to the effect of the registration of restrictive covenants as between purchasers of different plots, or against the common vendor, see *Willé* v. *St. John*, [1910] 1 Ch. 325, C. A.; and see title SALE OF LAND.

(*p*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 5. In the case of land contracted to be bought, the vendor must consent to the application (*ibid.*; Land Transfer Rules, 1903, r. 21). As to purchase from trustees for sale, see the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 68. As to registration of a county council or their transferees in respect of small holdings, see the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 19; title SMALL DWELLINGS AND SMALL HOLDINGS.

(*q*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 11; and see note (*p*), *supra*.

(*r*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 14.

(*s*) *Ibid.*, s. 6; see Land Transfer Rules, 1903, rr. 78—82; title SETTLEMENTS.

(*t*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 6 (2).

the time being entitled under the settlement are not affected by the registration (*a*).

Persons with power of sale.

566. Where land is held on trust for sale, or any trustee, mortgagee, or other person has a power of sale, the trustee or other person having such power may apply to be registered as proprietors, with the consent of the persons, if any, whose consent is required to the exercise of the trust or power of sale (*b*).

SUB-SECT. 3.—*Effect of Registration.*

Titles which can be registered.

567. Freehold land can be registered with an absolute, a possessory, or a qualified title; leasehold land can be registered with an absolute title, with a good leasehold title, with a possessory title, or with a qualified title.

Absolute title (freehold).

568. The first registration of freehold land with an absolute title enables the registered proprietor to sell an estate in fee simple, subject (1) to registered incumbrances; (2) to incidents of tenure, easements, and other liabilities which are not treated as incumbrances on the register, unless the contrary is expressed; (3) where the registered proprietor is a trustee, or other person not entitled for his own benefit, to any unregistered estates, rights, or equities enforceable against him; but free from all other estates and interests, including rights of the Crown (*c*).

Possessory title (freehold).

569. Registration with a possessory title does not prejudice adverse rights existing or capable of arising at the time of registration; but otherwise it has the same effect as registration with an absolute title. The result is that the title prior to registration can be impeached, but not the title after registration (*d*). Hence, on a sale of land registered with a possessory title, the title off the register prior to registration must be examined in the usual way from the date fixed by law or agreement as the commencement of title.

Qualified title (freehold).

570. Where the applicant for registration with an absolute title shows a good title save for some specific defect, any rights arising by reason of such defect may be excepted from the effect of registration, but otherwise the registered title is absolute. This is a qualified title (*e*).

(*a*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 6 (8). As to raising money required for charges, see *ibid.*, s. 6 (7).

(*b*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 68. As to registration of charity lands under this provision, see Land Transfer Rules, 1903, rr. 83—86, 257; and see title CHARITIES, Vol. IV., pp. 246, 247.

(*c*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 7, 95, 96. Registration vests appurtenances in the registered proprietor (Land Transfer Rules, 1903, r. 254).

(*d*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 8. In a compulsory area it is sufficient to register with a possessory title (Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 20 (3)). As to the possible danger of relying on a possessory title, see *Marshall* v. *Robertson* (1905), 50 Sol. Jo. 75.

(*e*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 9; Land Transfer Rules, 1908, r. 36.

SECT. 3. Transfer by Registration of Title.

Absolute title (leasehold).

571. The registration of leasehold land (*f*) with an absolute title vests in the first registered proprietor the possession of the demised land for all the term of the lease, subject (1) to the implied and express covenants and obligations incident to the leasehold estate; (2) to registered incumbrances; (3) to easements and other liabilities which are not treated as incumbrances, unless the contrary is expressed on the register; (4) where the registered proprietor is a trustee, or other person not entitled for his own benefit, to any unregistered estates, rights, or equities enforceable against him; but free from all other estates and interests, including rights of the Crown (*g*). Thus an absolute title implies, first, that the lease is well granted by a person entitled to grant it, and, secondly, that the lease is vested in the registered proprietor.

Good leasehold title.

572. A good leasehold title only implies that the leasehold interest, whether well created or not, is vested in the registered proprietor; and registration with such a title does not prejudice rights adverse to the lessor's power to grant the lease, but otherwise it has the same effect as an absolute title (*h*).

Possessory title (leasehold).

573. A possessory leasehold title corresponds to a possessory freehold title: it does not prejudice rights adverse to the title of the first registered proprietor which are existing, or capable of arising, at the time of registration; but otherwise it has the same effect as an absolute title (*i*).

Qualified title (leasehold).

574. Where the title of the applicant is subject to some specific defect, any rights arising by reason of such defect may be excepted from the effect of registration, but otherwise the registered title is absolute. This is a qualified leasehold title (*k*).

SUB-SECT. 4.—*Application for Registration.*

How made.

575. The application for registration must be in writing, and must state whether an absolute or possessory title is required (*l*).

Documents accompanying application.

The application must, unless the registrar otherwise directs, be accompanied by all such original deeds and documents relating to the title as the applicant has in his possession or under his control, including opinions of counsel, abstracts of title, contracts for or conditions of sale, requisitions, replies, and other like documents; a copy or sufficient abstract of the last document of title, not being a

(*f*) The registrar, on proof of the determination of a lease of registered leasehold land, notes the same on the register (Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 20; Land Transfer Rules, 1903, rr. 218, 221, 222).

(*g*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 13, as altered by the Land Transfer Rules, 1903, r. 55; and see also *ibid.*, rr. 60, 61. Where the lease contains a prohibition against alienation without licence, rights arising on alienation without licence are excepted from the effect of the registration (*ibid.*, r. 62). The registrar may enter a restriction protecting the restraint (Land Transfer Rules, 1908, r. 41).

(*h*) Land Transfer Rules, 1903, rr. 52, 56.

(*i*) *Ibid.*, r. 57.

(*k*) *Ibid.*, rr. 58, 59.

(*l*) Land Transfer Rules, 1908, r. 18. As to application by, and other proceedings on behalf of, persons under disability, see the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 88; also *ibid.*, ss. 76, 77, 87.

document of record; and sufficient particulars, by plan or otherwise, to enable the land to be identified on the ordnance map or Land Registry general map (*m*). When the title has been examined and all preliminaries satisfied, the registration is completed as of the day on which the application was delivered (*n*).

Priority notice.

An intending applicant for registration may secure priority of registration by lodging a priority notice at the registry and making his application within fourteen days or such further time as the registrar allows (*o*); after his application has been made, he can effectually transfer or charge the land, subject to prior rights obtained by registration (*p*).

Caution against registration.

576. Any person having or claiming such an interest in land as entitles him to object to any disposition thereof being made without his consent may lodge a caution against registration of the land (*q*).

SUB-SECT. 5.—*Proof of Title.*

Absolute title.

577. Before registration of an absolute title to freehold land, the registrar must approve the title to the fee simple (*r*). Before registration of an absolute leasehold title, he must approve the title both to the leasehold and to the freehold, and to any intermediate leasehold that may exist; and before registration of a good leasehold title he must approve the title to the leasehold interest (*s*).

Examination of title.

For this purpose the title shown by the documents accompanying the application is examined by or under the superintendence of the

(*m*) Land Transfer Rules, 1908, r. 19. As to applications by corporations, see Land Transfer Rules, 1903, r. 256. In the case of leasehold land, the lease itself, if in the applicant's possession or control, must be delivered; in other cases, a copy or abstract, or other sufficient evidence of its contents (Land Transfer Rules, 1903, r. 51). As to applications, see, further, *ibid.*, rr. 317—321. Evidence of value may be required for the purpose of ascertaining the fees payable (*ibid.*, r. 330). All documents of title must, if required, be disclosed by affidavit or declaration (Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 70; Land Transfer Rules 1908, r. 44; and see Land Transfer Rules, 1903, r. 341); and the registrar can enforce the production of documents in the possession of third persons, if the applicant or any trustee for him is entitled to production (Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 71). Sufficient documents must be produced to the registrar and marked by him with notice of registration to ensure that the fact of registration cannot be concealed from future purchasers (*ibid.*, s. 72; Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.). As to production and marking of deeds on application for a possessory title, see Land Transfer Rules, 1908, rr. 45, 46. As to costs of applications for registration and other proceedings in the registry, see Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 73; Land Transfer Rules, 1903, r. 334.

(*n*) Land Transfer Rules, 1908, r. 47.

(*o*) Land Transfer Rules, 1903, r. 95.

(*p*) *Ibid.*, r. 96.

(*q*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 60—64; Land Transfer Rules, 1903, rr. 88—94.

(*r*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 6; Land Transfer Rules, 1908, r. 35. Before registering a purchaser the registrar must see that the same stamp duties have been paid as if the disposition to the purchaser were unregistered (Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 83 (7)).

(*s*) Land Transfer Rules, 1908, r. 53. Where the original lessee is the applicant, see *ibid.*, r. 54.

SECT. 3. Transfer by Registration of Title.

registrar in accordance with the usual conveyancing practice (*t*); but he may modify the examination in such manner as he thinks fit (1) where the land has been sold or purchased under an order of the court; (2) where the first registered proprietor was a purchaser on sale, and he has been registered with possessory or qualified title for six years; and (3) where it appears to the registrar that the title has been sufficiently investigated on a transaction for value (*a*).

Notice of application.

Advertisements are, in general, required to be issued (*b*), and any person may object to the registration (*c*). Any such objection is determined by the registrar, subject to appeal to the court (*d*). A qualified title cannot be registered save on the applicant's request in writing (*e*).

Possessory title.

578. An applicant may be registered with a possessory title, if the documents afford *primâ facie* evidence of his right to apply for registration as first proprietor (*f*). If he has no documents of title, a statutory declaration of possession, if the registrar is satisfied on inquiry or otherwise that he is in possession or in receipt of the rents and profits, may be taken as sufficient evidence for this purpose (*g*).

Conversion into absolute title.

After registering the possessory title, the registrar may, if the documents justify it, with the consent of the applicant, convert it into an absolute title (*h*); or a note may be entered that the title will become absolute at the expiration of a particular period, or on the occurrence of a particular event (*i*).

Land certificate.

579. Upon registration, a certificate, called the "land certificate," is either delivered to the registered proprietor, or, if he prefers, is deposited in the registry (*k*). This states the nature of the title (*l*).

(*t*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 17; Land Transfer Rules, 1908, r. 24. The registrar may accept a good holding title (Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 17 (3)). Doubtful questions of title may, on the application of any party interested, be referred to the court (Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 74—77). As to references to counsel, see Land Transfer Rules, 1903, rr. 313—315; Land Transfer Rules, 1908, r. 25.

(*a*) Land Transfer Rules, 1908, r. 27.

(*b*) *Ibid.*, rr. 28, 29. For cases where advertisements can be dispensed with, see *ibid.*, r. 30.

(*c*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 17 (1); Land Transfer Rules, 1908, r. 31.

(*d*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 17 (2); Land Transfer Rules, 1908, rr. 32—34.

(*e*) Land Transfer Rules, 1908, r. 36.

(*f*) *Ibid.*, r. 37.

(*g*) *Ibid.*, r. 38.

(*h*) *Ibid.*, r. 39.

(*i*) *Ibid.*, r. 42.

(*k*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 10 (as to freeholds); Land Transfer Rules, 1903, r. 65 (as to leaseholds); as to both, see Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 8 (5), which provides for deposit in the registry; and, as to renewal of certificates, see Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 79; Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 8 (3). The certificate is *primâ facie* evidence of the matter therein contained (Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 80); and, as to certificates generally, see Land Transfer Rules, 1903, rr. 258—268.

(*l*) See Land Transfer Rules, 1903, Form 66.

It must be produced to the registrar on every entry of a disposition by the registered proprietor (*m*), and a note of the entry will be indorsed on it; and it must be handed to a purchaser of the land on completion of his purchase (*n*).

SUB-SECT. 6.—*Registered Charges and Lien by Deposit of Certificate.*

Creation of charges.

580. The registered proprietor can by entry on the register create charges on the land, whether for a principal sum or for an annuity or other periodical payment, and a certificate of charge is delivered to the proprietor of the charge (*o*). The certificate must be produced to the registrar on every entry of a disposition by the registered proprietor of the charge (*a*).

Creation of charge before registration of title.

A person on whom the right to be registered as proprietor of the land has devolved, or by whom it has been acquired, may, by observing the prescribed conditions, create a charge before he is himself registered (*b*).

Void stipulations.

581. Stipulations in a charge placing a restriction on the registered proprietor's power of transfer, or affecting registered dealings with the land otherwise than by the registration or other protection of the charge, are void (*c*).

Limited operation.

582. Where a registered charge is created on land registered with a possessory or qualified title, the operation of the charge is limited accordingly (*d*).

Cancellation or part discharge.

583. A registered charge can be either cancelled or partly discharged on the requisition of the registered proprietor of the charge, or on due proof of its satisfaction (*e*).

(*m*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 8 (1).

(*n*) *Ibid.*, s. 8 (2). *Ibid.*, s. 8, also provides for the case of a sale of part of the land comprised in the certificate. It must be produced whenever an application for registration of any matter is made with the consent of the registered proprietor (Land Transfer Rules, 1903, r. 365).

(*o*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 22; Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 9 (3). As to charges on registered land, see Land Transfer Rules, 1903, rr. 158—174. As to the provisions implied in a registered charge, and as to its form, see title MORTGAGE, Vol. XXI., p. 85. The charge may, with the approval of the registrar, which is usually given, contain a conveyance of the legal estate (*Capital and Counties Bank, Ltd.* v. *Rhodes*, [1903] 1 Ch. 631, 658, C. A.; and see Land Transfer Rules, 1903, r. 97). As to incumbrances prior to registration and sub-mortgages, see *ibid.*, rr. 175—181. For form of charge, see Encyclopædia of Forms and Precedents, Vol. XI., pp. 390 *et seq.* As to sale by a mortgagee by sub-demise executed before registration of the lease, see *Re Voss and Saunders' Contract*, [1911] 1 Ch. 42. The registered chargee is not entitled to custody of the land certificate unless expressly so agreed, and it need not be produced on registration of a purchaser from the mortgagee under the power of sale (Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 8 (4)). As to a transfer in exercise of the power of sale, see Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 9 (1); and see title MORTGAGE, Vol. XXI., pp. 84, 249.

(*a*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 8 (1).

(*b*) *Ibid.*, s. 9 (6); Land Transfer Rules, 1903, rr. 104, 105.

(*c*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65) s. 9 (4). As to the priority of registered charges, see title MORTGAGE, Vol. XXI., p. 86.

(*d*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.

(*e*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 28; Land Transfer

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Lien.

584. A lien on registered land or on a registered charge may be created by deposit of the land or charge certificate. This is subject to any registered estates, charges, or rights, but otherwise is equivalent to a lien created by deposit of deeds or of a mortgage deed (*f*). Notice of the deposit can be given to the registrar, and this is entered in the charges register and operates as a caution. Upon application for registration a lien can be created by notice of an intended deposit (*g*).

SUB-SECT. 7.—*Registered Transfers.*

Right to transfer freehold land.

585. The registered proprietor of freehold land can, by registered transfer, transfer the land or any part of it (*h*). A land certificate is delivered to the transferee, and, where the land is severed, a land certificate is delivered to the transferor in respect of the land retained by him (*h*). A person on whom the right to be registered has devolved or by whom it has been acquired, may, by observing the prescribed conditions, transfer the land before he has been registered (*i*).

Effect of transfer.

A transfer of land registered with absolute title for valuable consideration confers on the transferee an estate in fee simple, subject (1) to any registered incumbrances, and (2), unless the contrary is expressed on the register, to easements and other rights which, for the purpose of registration, are not incumbrances, but free from all other estates and interests, including Crown rights (*k*). A transfer of a qualified title or a possessory title has the same effect, save that, in the case of a qualified title, the force of the registered qualification is not prejudiced (*l*); and, in the case of a possessory title, adverse rights subsisting or capable of arising at the time of first registration are not affected (*m*). A transfer made without consideration has the same effect as a transfer for value, save that

Act, 1897 (60 & 61 Vict. c. 65), Sched. I. As to discharge of incumbrances entered as affecting the land on first registration, see the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 19; Land Transfer Rules, 1903, rr. 216, 217.

(*f*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 8 (6). As to mortgages by deposit of deeds, see title MORTGAGE, Vol. XXI., pp. 78 *et seq.*

(*g*) Land Transfer Rules, 1903, rr. 243—250. The lien is subject to unregistered interests protected by caution (*ibid.*, r. 251).

(*h*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 29. As to registered dispositions generally, see the Land Transfer Rules, 1903, rr. 97—125; as to registered transfers, *ibid.*, rr. 126—157; as to a transfer combined with a discharge of a charge or incumbrance, *ibid.*, r. 182; as to the evidence of title which a purchaser of registered land can require, see the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 14; title SALE OF LAND. For forms of transfer, see Encyclopædia of Forms and Precedents, Vol. XI., pp. 361 *et seq.*

(*i*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 9 (6); Land Transfer Rules, 1903, rr. 104, 105.

(*k*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 30. The transfer of land under this provision takes place by virtue of an overriding power, and not by virtue of any estate in the registered proprietor (*Capital and Counties Bank, Ltd.* v. *Rhodes*, [1903] 1 Ch. 631, 655, C. A.).

(*l*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 31.

(*m*) *Ibid.*, s. 32.

the transferee takes subject to any unregistered estates and equities to which the transferor was subject (*n*).

586. The registered proprietor of leasehold land can transfer the whole of his estate in the land, or any part thereof (*o*). Transfer of leasehold land.

The transferee takes subject to all implied and express covenants, obligations, and liabilities incident to the estate, but otherwise the transfer corresponds in its effect to a transfer of freehold land; if the title is absolute, the transferee takes subject only to registered incumbrances, and to statutory non-incumbrances (*p*); if it is a qualified title, the effect of the qualification is preserved (*p*); if it is a good leasehold title, rights adverse to the lessor are preserved (*q*); if it is a possessory title, adverse rights subsisting or capable of arising at the time of first registration are preserved (*r*); if the transfer is voluntary, unregistered estates and equities are preserved (*s*). On the transfer there is implied, on the part of the transferor, a covenant that the rent is paid and the covenants performed and observed until the transfer; and on the part of the transferee, a covenant to pay, perform, and observe the rent and covenants in the future, and to indemnify the transferor (*t*). Effect of transfer.

587. A transfer of freehold or leasehold land carries the mines and minerals, unless there is some indication to the contrary in the register, or in the transfer, or, in the case of leasehold land, in the lease (*u*). Effect on mines and minerals.

588. The registered proprietor of a charge may transfer it by registered transfer, and either the charge certificate is corrected or a new one issued (*a*). A registered transferee for value of a charge and his successors in title are not affected by any irregularity or invalidity in the original charge of which the transferee was not aware at the time of the transfer (*b*). Transfer of registered charge.

The registered proprietor of a charge may create a sub-charge (*c*). Sub-charge.

589. Upon the death of the registered proprietor of land or of a charge, or upon a change in his interest by bankruptcy or otherwise, the persons thereupon becoming entitled are, upon evidence being furnished to the registrar, entered on the register as proprietors in Devolution of registered title.

(*n*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 33.
(*o*) *Ibid.*, s. 34.
(*p*) *Ibid.*, s. 35; Land Transfer Rules, 1903, r. 140.
(*q*) *Ibid.*, r. 141.
(*r*) *Ibid.*, r. 142.
(*s*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 38.
(*t*) *Ibid.*, s. 39.
(*u*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I. As to the registration of title to mines, see title MINES, MINERALS, AND QUARRIES, Vol. XX., p. 554.
(*a*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 40. The transfer must be in the prescribed form (Land Transfer Rules, 1903, r. 168). As to correcting the certificate, see the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 8 (1); Land Transfer Rules, 1903, r. 259.
(*b*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.
(*c*) *Ibid.*, s. 22 (6) (c); Land Transfer Rules, 1903, rr. 178—181; see title MORTGAGE, Vol. XXI., p. 87. For a form, see Encyclopædia of Forms and Precedents, Vol. XI., p. 414.

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his place (*d*). They hold the land or charge for the purposes to which it is applicable at law, and subject to unregistered estates and equities, but otherwise as though they were transferees for value (*e*).

SUB-SECT. 8.—*Unregistered Interests.*

Effect on legal estate of dealings off the register.

590. Registration of title does not prevent dealings with the property by unregistered instruments, and such instruments may either convey the legal estate or create equitable estates or interests. Thus, where the legal estate is in the first instance vested in the registered proprietor, he can by an ordinary unregistered assurance convey it to another person, and thus sever it from the registered title; and all subsequent dealings with the land may go on without reference to the register (*f*). If, however, at any time there should be a registered transfer of the land for value, this again joins the legal estate to the registered title, and such registered title will prevail over the intermediate unregistered title (*g*).

Capacity to deal with land by instruments off the register.

591. In the same way, any person, whether he is the registered proprietor or not, if he has a sufficient estate or interest in the land, can create estates, rights, interests, and equities in the same manner as if the land were not registered. The only restrictions imposed by statute are (1) that the registered proprietor of land shall alone be entitled to transfer or charge it by registered disposition, and that the registered proprietor of a charge shall alone be entitled to transfer it by such disposition; and (2) that all unregistered dispositions take effect subject to the estate and right of the registered proprietor, that is, the estate and right of such proprietor has always a statutory priority (*h*).

SUB-SECT. 9.—*Protection of Unregistered Interests.*

Means of protection.

592. Unregistered interests can be protected by entering on the register notices, cautions, or inhibitions, or specific restrictions on the powers of the registered proprietor (*h*).

Notices of leases and of estates in dower or by the curtesy.

593. Short leases accompanied by occupation are statutory non-incumbrances, and prevail over the registered title without being entered on the register (*i*). Other leases can be protected by notice entered on the register. This notice gives the lease priority over subsequent registered dispositions of the land, but not over the proprietors of incumbrances registered before the registration of

(*d*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 41—45, 47; Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.; Land Transfer Rules, 1903, rr. 183—200.

(*e*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 46. The provisions of the Trustee Act, 1893 (56 & 57 Vict. c. 53), apply to registered land and charges (Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 85).

(*f*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 49; *Capital and Counties Bank, Ltd.* v. *Rhodes*, [1903] 1 Ch. 631, 655, C. A.

(*g*) See the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 30.

(*h*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 49. This includes the power to sever the mines and minerals from the surface (Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.).

(*i*) See title LANDLORD AND TENANT, Vol. XVIII., p. 402.

the notice (*j*). Notice may be registered also of estates in dower or by the curtesy, and these estates then have the effect of registered incumbrances (*k*).

Cautions.

594. A caution in respect of registered land or of a registered charge may be lodged by any person interested under an unregistered instrument or as a judgment creditor or otherwise. The caution prevents any registered dealings with the land or charge until notice has been served on the cautioner specifying a time within which he can intervene. Upon the cautioner giving sufficient security to indemnify parties affected, the registrar can delay registering any dealing with the land or charge (*l*). A person lodging a caution without reasonable cause is liable to pay compensation (*m*).

Inhibitions.

595. Dealings with registered land or a registered charge may be prevented by an inhibition. The inhibition is made by order of the court, or by entry by the registrar subject to an appeal to the court. It forbids for a time, or until the occurrence of a specified event, or generally until further order or entry, any dealing with the registered land or charge (*n*).

Restrictions.

596. The registered proprietor of land or of a charge can apply to have restrictions placed on his transferring or charging the same. The restriction may prevent a transfer or charge unless (1) notice of an application for the transfer or charge is sent to a specified address; (2) the consent of a specified person is given; or (3) some such other matter or thing is done as may be required by the applicant and approved by the registrar (*o*).

Protection of inalienable interests.

Where the estate of the first registered proprietor is or may be subject to a restraint on alienation, the registrar must enter a restriction protecting the restraint (*p*).

Protection of trusts.

597. Trusts can only be protected in the manner above stated; the beneficiary cannot rely on the doctrine of notice. Neither the registrar, nor any person dealing with registered land or a charge, can be affected with notice of a trust, express, implied, or

(*j*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 50, 51; Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.; Land Transfer Rules, 1903, rr. 201—206. As to noting the determination of the lease, see *ibid.*, rr. 219—222.

(*k*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 52; Land Transfer Rules, 1903, r. 207.

(*l*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 53—55; Land Transfer Rules, 1903, rr. 226—233. As to the Ecclesiastical Commissioners using cautions and inhibitions, see *ibid.*, r. 242.

(*m*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 56.

(*n*) *Ibid.*, s. 57; Land Transfer Rules, 1903, rr. 234—239, 241.

(*o*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 58, 59; Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.; Land Transfer Rules, 1903, rr. 240, 241. On a registry of joint proprietors, an entry may be made restraining dispositions when the number of them is reduced below a specified number (Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 83 (3); Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.; Land Transfer Rules, 1903, rr. 224, 225). As to restrictions on dispositions by incumbents, see the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 15.

(*p*) Land Transfer Rules, 1908, r. 41.

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constructive; and references to trusts are, as far as possible, excluded from the register (*q*).

Fraudulent instruments.

598. Registration is no protection to fraudulent instruments, and any disposition of land or of a charge which, if unregistered, would be fraudulent and void, is fraudulent and void notwithstanding registration; but this provision is without prejudice to the statutory rights of persons claiming under registered dispositions for valuable consideration (*r*).

SUB-SECT. 10.—*Rectification and Indemnity.*

General statutory provisions.

599. The Land Transfer Act, 1875 (*s*), makes provision, in certain cases, for rectification of the register, but does not give indemnity to the person whose registered title is thus displaced. The Land Transfer Act, 1897 (*t*), makes further provision for rectification and also gives indemnity; and, in cases where rectification cannot be made, indemnity may be given to the true owner. Indemnity is paid out of an insurance fund provided by the Land Registry fees, and in case of deficiency out of the Consolidated Fund (*u*).

Rectification under the Land Transfer Act, 1875.

600. Under the Land Transfer Act, 1875 (*a*), rectification cannot be made as against estates or rights acquired by registration (*b*), that is, as against registered absolute titles and genuine registered transfers from the registered absolute proprietors (*c*). Subject to such estates and rights, the court may order a rectification of the register: (1) where it has decided that any person is entitled to an estate, right or interest in any registered land or charge, and that in consequence rectification is required (*d*); (2) where any person is aggrieved by an entry made in, or by the omission of an entry

(*q*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.; substituted for the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 83 (1).

(*r*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 98; and as to punishment for fraud, see *ibid.*, ss. 99—103.

(*s*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 95, 96.

(*t*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 7.

(*u*) *Ibid.*, s. 21. The claim to indemnity is a simple contract debt (*ibid.*, s. 7 (7)); and the indemnity is awarded by the registrar, subject to an appeal to the court (*ibid.*, s. 7 (5); *A.-G.* v. *Odell*, [1906] 2 Ch. 47, C. A., *per* KEKEWICH, J., at p. 50).

(*a*) 38 & 39 Vict. c. 87.

(*b*) *Ibid.*, ss. 95, 96, both beginning "subject to any estates or rights acquired by registration in pursuance of this Act."

(*c*) *A.-G.* v. *Odell*, *supra*, at p. 73.

(*d*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 95. As to rectification of the register by cancelling a charge in pursuance of an order for foreclosure, see *Weymouth* v. *Davis*, [1908] 2 Ch. 169; title MORTGAGE, Vol. XXI., p. 285, note (*p*); and, as to the procedure where a lease subject to a registered charge has been determined by re-entry, see *Pantlin* v. *Evans*, [1911] W. N. 80. Where a title to registered land has been acquired by possession, the register may be rectified under this provision; see Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 12; title LIMITATION OF ACTIONS, Vol. XIX., p. 159. Rights acquired, or in course of being acquired, under the Statute of Limitations are not deemed to be incumbrances (see p. 311, *ante*), and the registered land is, therefore, subject to them (Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 18, as altered by the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. I.).

from, the register, or where default or unnecessary delay takes place in making an entry and the court is satisfied that the justice of the case requires rectification (*e*).

Rectification under the Land Transfer Act, 1897.

Under the Land Transfer Act, 1897 (*f*), where a registered disposition would, if unregistered, be absolutely void, or where the effect of any error, omission, or entry in the register would be to deprive a person of land of which he is in possession, or in receipt of the rents and profits, the register must be rectified (*f*), notwithstanding that this displaces an estate or right acquired by registration (*g*).

Production of certificate.

Where practicable the land certificate or certificate of charge must be produced on any rectification of the register (*h*).

Cases in which indemnity may be given.

601. Indemnity can be given in the following cases:—

(1) Where any error or omission is made in the register, or an entry is made or procured by fraud or mistake, and rectification cannot be made. The person suffering loss—that is, in general, the true owner of the registered land or charge—is entitled to indemnity (*i*).

(2) Where the register is rectified because a registered disposition is, as a disposition, absolutely void, or because the effect of such error, omission, or entry would be to interfere with the possession, the person suffering loss by the rectification—that is, the registered proprietor—is entitled to indemnity (*k*).

(*e*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 96. *Ibid.*, s. 95, provides for rectification in cases where rights exist adverse to the registered title; *ibid.*, s. 96, appears to be intended to meet cases of default on the part of the Land Registry Office; see Brickdale and Sheldon, Land Transfer Acts, 2nd ed., p. 232. The court referred to in the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 95, is "any court of competent jurisdiction," *i.e.*, any court by which the adverse right is established; the court referred to in *ibid.*, s. 96, is the court as defined for the purposes of the Acts (Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 114; Land Transfer Rules, 1903, r. 299). The Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 114, contemplates that the county court may be prescribed by rule as an appropriate court, but this has not been done.

(*f*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 7.

(*g*) Rectification in this case is not expressed to be subject to estates or rights acquired by registration; any such estates or rights may be the subject of indemnity; see the text, *infra*. The creation of the insurance fund, indeed, enabled the area of rectification to be extended; see *A.-G.* v. *Odell*, [1906] 2 Ch. 47, 73, C. A.

(*h*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 8 (1).

(*i*) *Ibid.*, s. 7 (1), which refers only to cases where rectification cannot be made "under the principal Act." Probably this must be construed as covering cases for rectification under either Act, since the procedure for rectification is established under the Land Transfer Act, 1875 (38 & 39 Vict. c. 87) (Brickdale and Sheldon, Land Transfer Acts, 2nd ed., p. 309). The register may be rectified either in the cases provided for by the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 95, 96, or in the cases provided for by the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 7 (2). If there is an error in the register, and the case is not within any of these provisions, a claim for indemnity may arise in favour of the person damnified by the error.

(*k*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 7 (2). In this case the register may be overridden, and the registered proprietor displaced in favour of the true owner; the registered proprietor is then, if his case is otherwise suitable, entitled to indemnity.

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(3) Where the register is rectified by reason of fraud or mistake in a registered disposition for value, which the grantee was not aware of and could not by the exercise of reasonable care have discovered, the person suffering loss by the rectification—that is, in general, the grantee—is entitled to indemnity (*l*).

Contributory negligence forfeits indemnity.

602. In all cases the right to indemnity is forfeited where the claimant has caused or substantially contributed to the loss by his own act, neglect, or default; and the omission to use the statutory means of protecting equitable interests is such neglect (*m*).

Effect of forgery.

603. Registration is, in general, a merely ministerial act on the part of the registrar, and where a forged document is presented to him and he makes a change in the register in pursuance of it, the person whose registered title is thus displaced is entitled to have the register rectified, and the person presenting the forged document has no claim to indemnity (*n*). But it is otherwise if the registration is made after judicial investigation of title by the registrar, and the insurance fund then guarantees to the registered proprietor that the title is good (*o*).

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Real action.

604. Formerly actions to recover land varied in form according as they were brought to recover a freehold or leasehold interest, *i.e.*, to recover seisin or possession. Seisin might be recovered in a real action, either proprietary or possessory (*p*). The possessory action assumed that the claimant had a right of entry, but under certain circumstances—where, for instance, a disseisor had died in possession and the tortious freehold had descended to his heir—the right of entry was "tolled" and the owner was left to his proprietary action (*q*).

Action of ejectment.

A lessee for years could recover possession in an action of ejectment (*a*). This did not rank as a real action (*b*), and the procedure was simpler; and, since the right of the lessee to recover

(*l*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 7 (4).

(*m*) *Ibid.*, s. 7 (3).

(*n*) *A.-G.* v. *Odell*, [1906] 2 Ch. 47, C. A. Thus, in general, registration is no protection against loss by forgery, that is, it does not give the protection provided in the case of shares where a company has adopted the Forged Transfer Acts, 1891 (54 & 55 Vict. c. 43), and 1892 (55 & 56 Vict. c. 36); see title COMPANIES, Vol. V., p. 195; compare *Gibbs* v. *Messer*, [1891] A. C. 248, P. C., decided on the Transfer of Land Act in Victoria: and see Brickdale and Sheldon, Land Transfer Acts, 2nd ed., p. 308, where it is suggested that the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 7 (1), excludes the principle of *Gibbs* v. *Messer*, *supra*; but this, as *A.-G.* v. *Odell*, *supra*, shows, is not so.

(*o*) See *A.-G.* v. *Odell*, *supra*, at p. 75.

(*p*) 3 Bl. Com. 180 *et seq.*; see note (*b*), p. 146, note (*p*), p. 250, *ante*.

(*q*) *Ibid.*, 177; see note (*b*), p. 146, *ante*.

(*a*) See p. 147, *ante*.

(*b*) As to real actions, see title ACTION, Vol. 1., pp. 32 *et seq.*

under his leasehold title depended on the right of the lessor to grant the lease, the action was utilised for the purpose of establishing the freehold title. Instead of suing in his own name in a real action, the claimant sued in the name of a fictitious lessee (*c*). The convenience of the procedure was so great that real actions fell into disuse save where the claimant had lost his right of entry, for ejectment assumed this right. At length the possibility of the right of entry being severed from the title was abolished, and so were real actions (*d*). Ejectment, shorn at a later date of its fictitious incidents (*e*), became the only means of recovering land, whether freehold or leasehold, and this remedy now exists under the form of the action to recover possession of land (*f*). A claimant can thus assert his title either by entry (*g*) or by action (*h*); but if he asserts it

Modern form of action.

(*c*) The full proceedings required a lease, an entry by the lessee, and an ouster of the lessee; but the real owner, if not made a defendant, could not come in to defend without leave, and the court took this opportunity to make the non-essential parts of the procedure fictitious. The person wishing to defend was required to enter into a consent rule whereby he admitted the lease, entry, and ouster, and the trial took place upon the claimant's title; see the account of the proceedings in 3 Bl. Com. 202; and, for form of proceedings, see *ibid.*, Appendix, p. vii. As to the old action of ejectment generally, see Adams, Action of Ejectment: and see title ACTION, Vol. I., pp. 34, 44, 46.

(*d*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 36; and see title LIMITATION OF ACTIONS, Vol. XIX., pp. 104, 105.

(*e*) Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76).

(*f*) See *Gledhill* v. *Hunter* (1880), 14 Ch. D. 492; title ACTION, Vol. I., pp. 34 *et seq.*, 44 *et seq.*

(*g*) A mere entry is not necessarily equivalent to taking possession (Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 10; *Randall* v. *Stevens* (1853), 2 E. & B. 641, 652; *Doe* d. *Baker* v. *Coombes* (1850), 9 C. B. 714; see *Worssam* v. *Vandenbrande* (1868), 17 W. R. 53; *Solling* v. *Broughton*, [1893] A. C. 556, P. C. (where the acts of the person entering were equivalent to taking possession); and see title LIMITATION OF ACTIONS, Vol. XIX., p. 129). The person entitled to possession may himself enter (*Taylor* v. *Cole* (1789), 3 Term Rep. 292; *Taunton* v. *Costar* (1797), 7 Term Rep. 431; *Davis* v. *Burrell* (1851), 10 C. B. 821; *Wildbor* v. *Rainforth* (1828), 8 B. & C. 4; *Turner* v. *Meymott* (1823), 1 Bing. 158; *Wright* v. *Burroughes* (1846), 3 C. B. 685); or enter by an agent (*Butcher* v. *Butcher* (1827), 7 B. & C. 399; *Hey* v. *Moorhouse* (1839), 6 Bing. (N. C.) 52; *Jones* v. *Chapman* (1849), 2 Exch. 803), or by a tenant (*Doe* d. *Hanley* v. *Wood* (1819), 2 B. & Ald. 724); or may ratify an entry made by a stranger (*Fitchet* v. *Adams* (1740), 2 Stra. 1128), and the fact that he has obtained judgment for possession at a future date does not preclude him from peaceably entering prior to that date (*Jones* v. *Foley*, [1891] 1 Q. B. 730). An entry under title upon part of the property operates as an entry on the whole (Littleton's Tenures, s. 417; *Cotton's Case* (1590), Cro. Eliz. 189); formerly it was necessary that the property should be all in one county (Co. Litt. 252 b); and, as to entry generally, see Cole, Law and Practice in Ejectment, pp. 66 *et seq.*

(*h*) The action may be brought in the High Court or, in some cases, in the county court; see title COUNTY COURTS, Vol. VIII., pp. 435 *et seq.* In the case of small tenements or deserted premises, a landlord can obtain an order for possession by summary proceedings before magistrates; see title LANDLORD AND TENANT, Vol. XVIII., pp. 559 *et seq.* Summary proceedings before magistrates are also available under special statutes in special cases, *e.g.*, schoolhouses (Grammar Schools Act, 1840 (3 & 4 Vict. c. 77), s. 19; School Sites Act, 1841 (4 & 5 Vict. c. 38), ss. 17, 18; see title EDUCATION, Vol. XII., p. 121, note (*e*)); allotments (Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 111; see title ALLOTMENTS, Vol. I., p. 337); parish

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by entry this can only be done in a peaceable manner; otherwise he is liable to criminal proceedings under the Statutes of Forcible Entry (*i*).

Writ of summons.

605. An action to recover possession of land is commenced by the issue of a writ of summons indorsed with a claim for recovery of possession (*k*). In certain cases, where a landlord is seeking to recover possession from a tenant (*l*), or a mortgagee is claiming possession of the mortgaged property and the mortgagor has attorned tenant to him (*m*), the writ may be specially indorsed (*n*), and judgment recovered by summary procedure (*o*).

Joinder of claims.

The plaintiff is entitled to join with the claim for recovery of the land a claim for mesne profits (*p*), or arrears of rent, or double value (*q*), or damages for breach of any contract under which the

property (Poor Relief Act, 1819 (59 Geo. 3, c. 12), ss. 24, 25; Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 6 (1) (c) (iii.); see title LOCAL GOVERNMENT, Vol. XIX., p. 252); charity lands (Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136), s. 13); and, in some cases, Crown lands (Defence Act, 1859 (22 Vict. c. 12), s. 5; Admiralty Lands and Works Act, 1864 (27 & 28 Vict. c. 57), s. 12; see title CONSTITUTIONAL LAW, Vol. VII., p. 91). The Crown may also recover possession of lands by information of intrusion (see title CROWN PRACTICE, Vol. X., pp. 5, 6), in which case the defendant must prove his title unless the Crown has been out of possession for twenty years (*ibid.*, p. 6).

(*i*) See titles CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 474 *et seq.*; LANDLORD AND TENANT, Vol. XVIII., p. 557, note (*m*). As to whether the issue of the writ is equivalent to re-entry, see *ibid.*, p. 536; and see Yearly Practice of the Supreme Court, 1913, p. 7.

(*k*) See R. S. C., Appendix A, Part III., s. IV.; and, as to the parties, see, generally, title PRACTICE AND PROCEDURE, Vol. XXIII., pp. 99, 101, 102. An action brought to establish title only, without claiming possession, does not rank as an action for recovery of land (*Gledhill* v. *Hunter* (1880), 14 Ch. D. 492). As to discovery in such an action, see title DISCOVERY, INSPECTION, AND INTERROGATORIES, Vol. XI., pp. 103, 104.

(*l*) See title LANDLORD AND TENANT, Vol. XVIII., p. 558.

(*m*) See title MORTGAGE, Vol. XXI., p. 159.

(*n*) R. S. C., Ord. 3, r. 6; see title PRACTICE AND PROCEDURE, Vol. XXIII., p. 112; Yearly Practice of the Supreme Court, 1913, pp. 15, 19. The relationship of landlord and tenant should be shown on the face of the writ (*Keenan* v. *Carson*, [1897] 2 I. R. 234).

(*o*) R. S. C., Ord. 14; see title JUDGMENTS AND ORDERS, Vol. XVIII., p. 190.

(*p*) Under the old procedure in ejectment, the recovery of mesne profits was a distinct proceeding from recovery of the land. The claimant first recovered in ejectment, and then brought trespass for mesne profits (*Astin* v. *Parkin* (1758), 2 Burr. 665). The recovery in ejectment was evidence of his title from the day of the demise stated in the declaration, but for any earlier period special proof of title had to be given (*Barnett* v. *Guilford (Earl)* (1855), 11 Exch. 19; *Ocean Accident and Guarantee Corporation* v. *Ilford Gas Co.*, [1905] 2 K. B. 493, 498, C. A.; Adams, Action of Ejectment, 2nd ed., p. 342). The profits could only be recovered for six years before action brought, since trespass for mesne profits was subject to the Limitation Act, 1623 (21 Jac. 1, c. 16); see Buller, Law of Nisi Prius, p. 88. It seems that, at any rate as between landlord and tenant, mesne profits may be calculated up to the date on which the plaintiff obtains possession (*Southport Tramways Co.* v. *Gandy*, [1897] 2 Q. B. 66; *Hamill* v. *M'Dornell*, [1909] 2 I. R. 104); and see titles JUDGMENTS AND ORDERS, Vol. XVIII., pp. 190, note (*i*), 194, note (*e*); LANDLORD AND TENANT, Vol. XVIII., p. 558. The necessity for bringing a separate action does not now exist, and the claim for mesne profits is made in the action for recovery of the land; but it is still subject to the six years' limitation; see title LIMITATION OF ACTIONS, Vol. XIX., p. 51, note (*b*).

(*q*) See title LANDLORD AND TENANT, Vol. XVIII., pp. 554 *et seq.*

land is held, or for any wrong or injury to the premises claimed; but he cannot join any other claim except by leave of the court (*r*). The land claimed should be so described in the writ that the description may, if necessary, be the foundation for a writ of possession (*s*).

Defendants.

As a rule, all persons in possession of the land of which the plaintiff claims possession should be joined as defendants to the writ (*a*), but in every case regard must be had to the circumstances (*b*).

Statement of claim.

606. The plaintiff in his statement of claim (*c*) must state his title with sufficient particularity to show how he derives his title to the land. A mere general statement that he is entitled under certain documents is not enough. He must set out their effect (*d*); but it is not necessary to give the exact words unless they are material (*e*). If he has not himself been in possession, he must trace his title from a person who has been in possession, and show the successive links in his title (*f*). He need not set out the defendant's title; it is in general sufficient to state that the defendant is in possession (*g*). If the defendant pleads the Statute of Limitations (*h*), the plaintiff must prove a title not extinguished by the statute (*i*).

(*r*) R. S. C., Ord. 18, r. 2; and see titles PLEADING, Vol. XXII., p. 444; PRACTICE AND PROCEDURE, Vol. XXIII., p. 109. The rule applies to a counterclaim (*Compton* v. *Preston* (1882), 21 Ch. D. 138). As to when leave will be granted, see Yearly Practice of the Supreme Court, 1913, p. 217, and the cases there cited. As to joining a claim for possession to a claim for foreclosure or redemption, see titles MORTGAGE, Vol. XXI., pp. 151, 283; PLEADING, Vol. XXII., p. 444.

(*s*) See R. S. C., Ord. 13, r. 8; title EXECUTION, Vol. XIV., p. 76.

(*a*) See title PRACTICE AND PROCEDURE, Vol. XXIII., p. 102; *Thompson* v. *Slade* (1856), 25 L. J. (EX.) 306.

(*b*) *Geen* v. *Herring*, [1905] 1 K. B. 152, C. A., *per* STIRLING, L.J., at p. 158. The tenant (*Doe* d. *James* v. *Stanton* (1819), 2 B. & Ald. 371; *Doe* d. *Henson* v. *Roe* (1844), 1 Dow. & L. 657), or the landlord alone where the tenants are numerous (*Geen* v. *Herring*, *supra*; *Roe* v. *Wiggs* (1806), 2 Bos. & P. (N. R.) 330), or even a mere servant of the occupier (*Doe* d. *Cuff* v. *Stradling* (1817), 2 Stark. 187; *Doe* d. *Atkins* v. *Roe* (1816), 2 Chit. 179; *Doe* d. *James* v. *Stanton*, *supra*), may be a sufficient defendant. Where the defendant is not in possession by himself or his tenant, the person who is in possession, if ejected, may have the judgment set aside on being added as a defendant (*Minet* v. *Johnson* (1890), 63 L. T. 507, C. A.; and see title PRACTICE AND PROCEDURE, Vol. XXIII., p. 126). Where the premises are vacant, and service on the defendant cannot otherwise be effected, the writ may by leave of the court or a judge be served by posting a copy on the door or some other conspicuous part of the property (R. S. C., Ord. 9, r. 9); and see title PRACTICE AND PROCEDURE, Vol. XXIII., p. 116; Yearly Practice of the Supreme Court, 1913, pp. 54 *et seq.* As to service of the writ in ordinary cases, see title PRACTICE AND PROCEDURE, Vol. XXIII., pp. 115 *et seq.*

(*c*) As to statements of claim generally, see title PLEADING, Vol. XXII., pp. 440 *et seq.*

(*d*) *Philipps* v. *Philipps* (1878), 4 Q. B. D. 127, C. A.; *Davis* v. *James* (1884), 26 Ch. D. 778.

(*e*) *Darbyshire* v. *Leigh*, [1896] 1 Q. B. 554, C. A.; see Yearly Practice of the Supreme Court, 1913, p. 266.

(*f*) *Palmer* v. *Palmer*, [1892] 1 Q. B. 319; see *Hodgins* v. *Hickson* (1878), 39 L. T. 644 (Ireland).

(*g*) *Hodgins* v. *Hickson*, *supra*; see Yearly Practice of the Supreme Court, 1913, p. 267, n.

(*h*) See Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 34; and see title LIMITATION OF ACTIONS, Vol. XIX., pp. 155, 158, 183, 184.

(*i*) *Dawkins* v. *Penrhyn* (*Lord*) (1878), 4 App. Cas. 51.

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Judgment in default of appearance.

607. If no appearance is entered to the writ, or if an appearance is entered, but the defence is limited to a part of the land only, judgment can be entered for possession of the land, or of the part to which the defence does not apply (*k*). If a claim for mesne profits, arrears of rent, double value, damages for breach of contract, or injury to the premises has been indorsed, judgment may in the same case be entered for this claim also (*l*).

Appearance by person in possession of land.

608. A landlord cannot require his tenant to defend the action on giving him an indemnity (*m*), nor can he defend in his tenant's name (*n*), but any person not named as a defendant in the writ may, by leave of the court or a judge, appear and defend on filing an affidavit showing that he is in possession either by himself or his tenant (*o*). If he appears as landlord, he must so state in his appearance (*p*), and he must give notice of appearance to the plaintiff's solicitor (*q*). A tenant is bound to give his landlord notice of an action for recovery of possession brought against him (*r*).

Proof of plaintiff's title.

609. The plaintiff must prove that he is entitled to recover the land as against the person in possession. He recovers on the strength of his own title, not on the weakness of the defendant's (*s*). But this does not mean that he is bound to show a title good against all the world. Possession in itself is a good title as against everyone except the true owner (*t*), and if one who has been in possession is wrongfully dispossessed, he is entitled to recover possession against the wrongdoer, notwithstanding that the true title may be shown to be in a third person (*a*). Whether an equitable owner is entitled to recover possession without bringing the legal title before the court is not settled, but apparently he is (*b*).

(*k*) R. S. C., Ord. 13, r. 8. The judgment is without costs; see Yearly Practice of the Supreme Court, 1913, pp. 110, 111, n.; title JUDGMENTS AND ORDERS, Vol. XVIII., pp. 185, 187, note (*e*); but the costs may perhaps be recovered as mesne profits in a separate action; see *Pearson* v. *Coaker* (1869), L. R. 4 Exch. 92.

(*l*) R. S. C., Ord. 13, r. 9; and see title JUDGMENTS AND ORDERS, Vol. XVIII., p. 185.

(*m*) *Right* v. *Wrong* (1734), Barnes, 173.

(*n*) *Roe* d. *Jones* v. *Doe* (1738), Barnes, 178; *Doe* d. *Tanner* v. *Gee* (1841), 9 Dowl. 612.

(*o*) R. S. C., Ord. 12, r. 25; see Yearly Practice of the Supreme Court, 1913, p. 98; title PRACTICE AND PROCEDURE, Vol. XXIII., p. 126. As to the obligation on a tenant to give his landlord notice of an action of ejectment, see the text, *infra*.

(*p*) R. S. C., Ord. 12, r. 26.

(*q*) *Ibid.*, r. 27.

(*r*) See title LANDLORD AND TENANT, Vol. XVIII., p. 559.

(*s*) *Goodtitle* d. *Parker* v. *Baldwin* (1809), 11 East, 488, 495; *Danford* v. *McAnulty* (1883), 8 App. Cas. 456, 462.

(*t*) *Asher* v. *Whitlock* (1865), L. R. 1 Q. B. 1.

(*a*) *Asher* v. *Whitlock*, *supra*; *Perry* v. *Clissold*, [1907] A. C. 73, P. C. *Doe* d. *Carter* v. *Barnard* (1849), 13 Q. B. 945, *contra*, is overruled. As to title extinguished by dispossession, see, generally, title LIMITATION OF ACTIONS, Vol. XIX., pp. 155 *et seq.*

(*b*) *General Finance, Mortgage and Discount Co.* v. *Liberator Permanent Benefit Building Society* (1878), 10 Ch. D. 15, 24; *Antrim Land etc. Co.* v.

Defence of defendant in possession.

610. A defendant who is in possession by himself or his tenant need not plead his title unless he relies on an equitable estate or right, or claims relief on an equitable ground (*c*) against a title asserted by the plaintiff. Save in the excepted cases, it is sufficient for him to plead that he is in possession, and this implies that he denies or does not admit the allegations of fact contained in the statement of claim (*d*). The defence may be limited to a part only of the land (*e*).

Judgment in default of defence.

611. If the defendant appears, but does not deliver a defence within the time limited for that purpose, the plaintiff can enter a judgment for possession with costs (*f*); and also for any claim for mesne profits, arrears of rent, double value, damages for breach of contract, or injury to the premises which is indorsed on the claim (*g*).

Effect of judgment for possession in ejectment.

612. Judgment in the action (*h*), being merely for the possession of the property, is not conclusive as to the title of the parties (*i*). It follows that an unsuccessful claimant may immediately commence another action (*k*), or a defendant who has been ejected may bring his action for recovery of possession against the claimant (*l*). The first judgment is, however, admissible as evidence in the second action between the same parties and those claiming under

Stewart, [1904] 2 I. R. 357, C. A.; and see *Ocean Accident and Guarantee Corporation* v. *Ilford Gas Co.*, [1905] 2 K. B. 493, C. A. In *Allen* v. *Woods* (1893), 68 L. T. 143, C. A., the legal owner was considered a necessary party, but there the trust was executory and had to be established in his presence. As to the right of a mortgagor to sue without joining the mortgagee, see title MORTGAGE, Vol. XXI., p. 190, note (*i*).

(*c*) *Sutcliffe* v. *James* (1879), 40 L. T. 875.

(*d*) R. S. C., Ord. 21, r. 21; *Danford* v. *McAnulty* (1883), 8 App. Cas. 456; see Yearly Practice of the Supreme Court, 1913, p. 288; title PLEADING, Vol. XXII., p. 449. As to the extent of the plaintiff's right to administer interrogatories and obtain discovery of the defendant's documents in an action for recovery of possession, see title DISCOVERY, INSPECTION, AND INTERROGATORIES, Vol. XI., pp. 65, 103, 104.

(*e*) R. S. C., Ord. 12, r. 28; Yearly Practice of the Supreme Court, 1913, p. 99.

(*f*) R. S. C., Ord. 27, r. 7; Yearly Practice of the Supreme Court, 1913, p. 336; and see title JUDGMENTS AND ORDERS, Vol. XVIII., p. 187. If the plaintiff succeeds as to part only of the land claimed, he recovers his costs only in respect of the issues affecting the land recovered (*Jones* v. *Curling* (1884), 13 Q. B. D. 262, 269, C. A.; and see title PRACTICE AND PROCEDURE, Vol. XXIII., pp. 176 *et seq.*

(*g*) R. S. C., Ord. 27, r. 8; and see title JUDGMENTS AND ORDERS, Vol. XVIII., p. 187. As to the method in which a judgment for possession of land is enforced, see title EXECUTION, Vol. XIV., pp. 76 *et seq.*

(*h*) As to registration of writs of execution under judgments, see titles EXECUTION, Vol. XIV., p. 70; JUDGMENTS AND ORDERS, Vol. XVIII., pp. 220, 221.

(*i*) *Taylor* d. *Atkyns* v. *Horde* (1757), 1 Burr. 60, 114. The party recovering judgment is in of his old estate (*Doe* d. *Daniel* v. *Woodroffe* (1849), 2 H. L. Cas. 811; *Spotswood* v. *Barrow* (1850), 5 Exch. 110, 113). The defending party cannot plead *res judicata* (*Doe* d. *Strode* v. *Seaton* (1835), 2 Cr. M. & R. 728, 731, 732).

(*k*) See *Doe* d. *Davies* v. *Evans* (1841), 9 M. & W. 48; title EQUITY, Vol. XIII., p. 59.

(*l*) See *Doe* d. *Foster* v. *Derby* (*Earl*) (1834), 1 Ad. & El. 783, 784, 791; *Doe* d. *Hitchings* v. *Lewis* (1758), 1 Burr. 614, 619.

PART VII. Actions to Recover Land.

them (*m*), and the court has power to stay the second action until the costs of the first action have been paid (*n*).

Part VIII.—Extinguishment of Title.

SECT. 1.—*Forfeiture.*

In general.

613. An estate in land may be forfeited for alienation in mortmain, for breach of condition, for waste, and for denying the title of the lord under whom the land is held (*o*).

Alienation in mortmain.

Alienation in mortmain is an alienation of lands or tenements to any corporation, sole or aggregate, ecclesiastical or temporal (*p*). Such an alienation is a cause of forfeiture to the Crown or mesne lord (if any) (*a*), unless made by licence from the

(*m*) *Doe* d. *Strode* v. *Seaton* (1835), 2 Cr. M. & R. 728, 731, 732; see *Doe* d. *Smith and Payne* v. *Webber* (1834), 1 Ad. & El. 119 (where the judgment was not admissible owing to a difference in the parties); and see titles ESTOPPEL, Vol. XIII., pp. 343 *et seq.*; EVIDENCE, Vol. XIII., pp. 542, 546.

(*n*) See title PRACTICE AND PROCEDURE, Vol. XXIII., pp. 157 *et seq.*; and see *Tichborne* v. *Mostyn* (1872), L. R. 8 C. P. 29.

(*o*) As to forfeiture, see, generally, 2 Bl. Com. 267 *et seq.*; as to forfeiture by limited owners, see Co. Litt. 251 a *et seq.* Formerly forfeiture was incurred by attainder for high treason or conviction for petit treason or felony. As to high treason and petit treason, see title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 450 *et seq.* High treason involved the absolute forfeiture of estates of inheritance, and the forfeiture of estates for life or years during the continuance of the estate (Treason Act, 1351 (25 Edw. 3, stat. 5, c. 2); 3 Co. Inst. 1, 19; 4 Bl. Com. 381). In petit treason and felony the offender forfeited his chattels real absolutely, and his freehold estates during his life, and after his death the Crown took his lands held in fee simple (but not in fee tail) for a year and a day, with the right to commit unlimited waste (4 Bl. Com. 385). The penalty of forfeiture was restricted to the life of the offender, save in high treason, petit treason, and murder, by the Corruption of Blood Act, 1814 (54 Geo. 3, c. 145). As to the abolition of petit treason, see title CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 450, note (*l*). Forfeiture was abolished by the Forfeiture Act, 1870 (33 & 34 Vict. c. 23). In lieu thereof the property of the convict vests in an administrator (*ibid.*, s. 9; and see titles CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 429; PRISONS, Vol. XXIII., pp. 261 *et seq.*). Bankruptcy also involves a species of forfeiture, since all the property of a bankrupt passes to his trustee in bankruptcy; see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 95. Formerly a feoffment in fee by a tenant for life or a fine was a forfeiture of his estate. It vested a tortious fee in the feoffee, but gave the remainderman an immediate right of entry (see note (*p*), p. 177, *ante*; note (*k*), p. 291, *ante*; 2 Bl. Com. 274; and see pp. 248, 249, *ante*); but now that feoffments have no tortious operation, this cause of forfeiture does not exist; see Challis, Law of Real Property, 3rd ed., p. 150. Alienation to an alien was a cause of forfeiture (2 Bl. Com. 274), but this also is obsolete; see the Naturalization Act, 1870 (33 & 34 Vict. c. 14), s. 2; title ALIENS, Vol. I., p. 309.

(*p*) 2 Bl. Com. 268. As to ecclesiastical corporations, see title ECCLESIASTICAL LAW, Vol. XI., pp. 792 *et seq.*; as to lay corporations, see title CORPORATIONS, Vol. VIII., pp. 367 *et seq.* As to ownership of property by corporations generally, see *ibid.*, pp. 365 *et seq.*

(*a*) This restriction on alienation was aimed chiefly at the religious houses, and they attempted to evade it by taking grants of land and

Crown (*b*), or under the powers of a statute (*c*). But it does not immediately vest the estate in the Crown or mesne lord; it only gives them a right of entry (*d*).

Breach of condition.

An estate created upon condition can be defeated by re-entry for breach of the condition (*e*).

Waste.

Waste committed by tenant in dower, by the curtesy, for life, or for years, is by statute a cause of forfeiture in favour of the owner of the inheritance (*f*); but in practice this remedy for waste is obsolete (*g*).

Denial of lord's title.

Denial of the lord's title might under the feudal system be a cause of forfeiture (*h*), and it may still be a ground of forfeiture as between landlord and tenant (*i*).

SECT. 2.—*Escheat.*

Escheat.

614. Upon the death of a tenant in fee simple intestate and without leaving an heir-at-law, the land escheats to the lord of whom

immediately reconveying to the grantor as tenant under them; this gave the pretext for subsequently entering and holding the land (2 Bl. Com. 269); the device was intended to be checked by Magna Carta, 1217 (2 Hen. 3), c. 43 (see Digby, History of the Law of Real Property, 5th ed., p. 133); and a general prohibition against alienation in mortmain was enacted by the Statute De Religiosis (1279), 7 Edw. 1, stat. 2, c. 13. It was still possible, however, for a religious house or other corporation to obtain land by means of a collusive action; hence the Statute of Westminster II. (1285), 13 Edw. 1, c. 32, provided for an inquiry into the demandant's title, and, if he had no title, the land was forfeited to the next lord of the fee; and, as to these statutes, see Digby, History of the Law of Real Property, 5th ed., pp. 219 *et seq.* The Statute Quia Emptores (1290), 18 Edw. 1, c. 1 (see p. 144, *ante*), in authorising alienations generally, expressly excluded alienations in mortmain (*ibid.*, s. 3). As to the attempts to evade forfeiture by means of grants to uses, see note (*p*), p. 272, *ante*.

(*b*) The method of obtaining the King's licence was prescribed by stat. (1299) 27 Edw. 1, stat. 2; and stat. (1306) 34 Edw. 1, stat. 3, preserved the rights of mesne lords. The prerogative right was affirmed by stat. (1344) 18 Edw. 3, stat. 3, c. 3, and again by stat. (1695—6) 7 & 8 Will. 3, c. 37; and the latter statute dispensed with the necessity of the mesne lords consenting to the licence. Forfeiture to the Crown and to mesne lords, and the grant of licences in mortmain, is now governed by the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), ss. 1, 2; see title CORPORATIONS, Vol. VIII., p. 368, note (*k*). As to the procedure to obtain a licence, see Encyclopædia of Forms and Precedents, Vol. XII., p. 759, note (*w*).

(*c*) See Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), s. 1 (1). For statutory exemptions, see titles CHARITIES, Vol. IV., pp. 137 *et seq.*; CORPORATIONS, Vol. VIII., p. 368.

(*d*) See title CORPORATIONS, Vol. VIII., p. 369.

(*e*) See p. 169, *ante*. As to forfeiture clauses in leases, see title LANDLORD AND TENANT, Vol. XVIII., pp. 530 *et seq.* As to protected life interests, see titles BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 148, 149; SETTLEMENTS.

(*f*) Statute of Gloucester (1278), 6 Edw. 1, c. 5; 2 Bl. Com. 283. As to waste, see pp. 175, 176, 187, 198, *ante*; and see titles LANDLORD AND TENANT, Vol. XVIII., pp. 496 *et seq.*; SETTLEMENTS.

(*g*) As to the statutory remedies for waste, and whether they apply to permissive as well as voluntary waste, see title LANDLORD AND TENANT, Vol. XVIII., p. 498, note (*b*).

(*h*) See 2 Bl. Com. 275.

(*i*) See title LANDLORD AND TENANT, Vol. XVIII., p. 532.

SECT. 2. Escheat.

the land is held; usually this is the Crown. The subject of escheat is fully dealt with elsewhere (*k*).

SECT. 3.—*Merger.*

The principle of merger.

615. Merger is an act of law (*l*), and, prior to the alteration effected by statute (*m*), took place when a particular estate in land and a subsequent estate both became vested in the same person without any intervening estate in another person (*n*). The particular estate was then at law merged or drowned in the subsequent estate (*o*). In general, it was essential that the particular estate should not be greater than the subsequent estate (*p*).

Where there is no merger at law.

616. The principle of merger was, however, subject to two exceptions. There was no merger at law if the person in whom the two interests united held them in different rights, where, for instance, he held a term of years as executor and the reversion in his own right (*q*); and an estate tail in freeholds has always been

(*k*) See p. 145, *ante*; titles CROWN PRACTICE, Vol. X., pp. 35 *et seq.*; DESCENT AND DISTRIBUTION, Vol. XI., pp. 23 *et seq.*; and as to escheat in the case of equitable estates, see *ibid.*, p. 24; title EQUITY, Vol. XIII., p. 95.

(*l*) 3 Preston, Conveyancing, p. 6: the whole of the third volume of this work is devoted to the subject of merger.

(*m*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (4).

(*n*) 2 Bl. Com. 177; 3 Preston, Abstracts of Title, 50; Challis, Law of Real Property, 3rd ed., p. 86; and see *Wiscot's Case* (1599), 2 Co. Rep. 60 b, 61 b, note (iv.).

(*o*) 2 Bl. Com. 177. The operation of merger is similar to that of surrender (see p. 292, *ante*), and hence it is said that a merger only takes place where a surrender of the particular estate to the owner of the subsequent estate is possible (3 Preston, Conveyancing, p. 152; Challis, Law of Real Property, 3rd ed., p. 87); but an express surrender takes effect in accordance with the intention of the parties, and the merger is then a consequence of the surrender; see title LANDLORD AND TENANT, Vol. XVIII., p. 547. Merger at law is independent of intention and follows upon the mere vesting of the estates in the same person; see Challis, Law of Real Property, 3rd ed., p. 88, as to the different effect in certain cases of surrender and merger.

(*p*) 3 Preston, Conveyancing, p. 50. Thus a term of years will merge in the reversion (*Capital and Counties Bank, Ltd.* v. *Rhodes*, [1903] 1 Ch. 631, 652, C. A.; 2 Bl. Com. 177); and a partial merger could take place at law where the term or the reversion was held in undivided moieties (*Bovy's (Sir Ralph) Case* (1672), 1 Vent. 193; *White* v. *Greenish* (1861), 11 C. B. (N. S.) 209, 233). An estate for life will merge in the inheritance in reversion (Co. Litt. 338 b; *Re Dunsany's Settlement, Nott* v. *Dunsany*, [1906] 1 Ch. 578, 582, C. A.; 3 Preston, Conveyancing, p. 255); and, since an estate for a man's own life is deemed to be larger than an estate *pur autre vie* (see p. 178, *ante*), the latter estate may merge in the former, but not *vice versâ* (*ibid.*; *Re Barry Rail. Co. and Wimborne (Lord)* (1897), 76 L. T. 489, 492); and see *Lemon* v. *Mark*, [1899] 1 I. R. 416, 435, C. A. But this rule does not apply to terms of years, and a term in possession merges in a shorter term in reversion; see title LANDLORD AND TENANT, Vol. XVIII., p. 552. As to the effect of a release or a surrender, see p. 292, *ante*.

(*q*) 2 Bl. Com. 177; 3 Preston, Conveyancing, pp. 50, 309; *Chambers* v. *Kingham* (1878), 10 Ch. D. 743; *Re Radcliffe, Radcliffe* v. *Bewes*, [1892] 1 Ch. 227, 231, C. A.; or a term of years in his own right and the reversion in right of his wife (Co. Litt. 338 b; *Platt (Lady)* v. *Sleap* (1611), Cro. Jac. 275; *Jones* v. *Davies* (1861), 7 H. & N. 507, Ex. Ch.; *Doe* d. *Blight* v. *Pett* (1840), 1 1 Ad. & El. 842; *Hurley* v. *Hurley*, [1908] 1 I. R. 393).

exempt from merger, and consequently cannot be destroyed by coming in contact with another estate tail or a remainder in fee simple in the same person (*r*).

Equitable principles applicable to merger.

617. In equity, the question of merger does not depend upon the mere fact of the union of the estates in the same person, but upon the intention of the parties concerned (*s*); and this intention may either be express, or it may be implied from the nature of the estates or other circumstances (*t*). In this respect the same principles apply to the merger of estates and to the merger of charges in the land (*u*); and it is now provided that there shall be no merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity (*v*). Consequently in questions of merger, whether arising in reference to legal or equitable estates, the equitable rule now prevails, and merger is not recognised as having taken place contrary to the intention, express or implied, of the parties (*w*).

Extinguishment analogous to merger.

618. When the same person has the legal estate in fee simple and is absolutely entitled as *cestui que trust* to the beneficial

But it seems that merger was only prevented in this case where the union of estates took place by act of law, and might follow on an assignment, notwithstanding the estates were held in different rights (3 Preston, Conveyancing, p. 285; Challis, Law of Real Property, 3rd ed., p. 92); and a difference has been suggested where a termor holds a term of years in his own right and the freehold in right of another, or the term in right of another and the freehold in his own right. In the former case there is a merger and he loses his term; in the latter there is no merger and the other person's right is saved (Co. Litt. 338 b; *Nurse* v. *Yerworth* (1674), 3 Swan. 608, 618). But the distinction has been questioned (see 3 Preston, Conveyancing, p. 278; Challis, Law of Real Property, 3rd ed., p. 93); and these subtleties are now practically obsolete in consequence of the prevalence of the equitable rule.

(*r*) *Wiscot's Case* (1599), 2 Co. Rep. 60 b, 61 a ("An estate tail cannot be merged nor surrendered, nor extinguished by accession of a greater estate"); *Roe* d. *Crow* v. *Baldwere* (1793), 5 Term Rep. 104, 109; *Van Grutten* v. *Foxwell, Foxwell* v. *Van Grutten*, [1897] A. C. 658, 679; 2 Bl. Com. 177; 3 Preston, Conveyancing, pp. 246, 341; Challis, Law of Real Property, 3rd ed., p. 93. But in the case of copyholds, the rule is different; see title COPYHOLDS, Vol. VIII., p. 111; and an estate tail after possibility of issue extinct (see p. 174, *ante*), merges on the acquisition of the fee (Co. Litt. 27 b; 3 Preston, Conveyancing, p. 240).

(*s*) See title EQUITY, Vol. XIII., p. 146.

(*t*) *Snow* v. *Boycott*, [1892] 3 Ch. 110; *Ingle* v. *Vaughan Jenkins*, [1900] 2 Ch. 368.

(*u*) *Ingle* v. *Vaughan Jenkins, supra; Capital and Counties Bank, Ltd.* v. *Rhodes*, [1903] 1 Ch. 631, C. A., *per* COZENS-HARDY, L.J., at p. 653. These principles are fully stated in title MORTGAGE, Vol. XXI., pp. 318 *et seq.*; and as to merger where a reversion in fee is purchased on behalf of a lunatic, see *Re Searle, Ryder* v. *Bond*, [1912] 2 Ch. 365.

(*v*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (4); *Snow* v. *Boycott, supra;* and see title EQUITY, Vol. XIII., p. 146.

(*w*) As to the equitable doctrine of merger, see, further, Challis, Law of Real Property, 3rd ed., pp. 94 *et seq.* On the union of a term and the reversion in the lessee, an intention to prevent merger may be gathered from subsequent dealings with the property (*Lea* v. *Thursby*, [1904] 2 Ch. 57). As to the statutory extinction of satisfied terms, see p. 271, *ante*.

SECT. 3. Merger.

ownership, the latter is, by an operation analogous to merger, extinguished in the legal ownership (*x*).

(*x*) *Selby* v. *Alston* (1797), 3 Ves. 339; and see *Re Douglas, Wood* v. *Douglas* (1884), 28 Ch. D. 327 (where an equitable estate acquired by an heir under an election merged in the legal estate acquired as heir). An equitable estate held by tenants in common may merge in an equal and co-extensive legal estate held by the same persons as joint tenants (*Re Selous, Thomson* v. *Selous*, [1901] 1 Ch. 921); see note (*n*), p. 201, *ante*; but there is no merger if the equitable and legal estates are not co-extensive (*Brydges* v. *Brydges, Philips* v. *Brydges* (1796), 3 Ves. 120, 126; *Merest* v. *James* (1821), Madd. & G. 118).

REAL REPRESENTATIVE.

See EXECUTORS AND ADMINISTRATORS.

RE-ASSURANCE.

See INSURANCE.

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Part I.—Appointment out of Court.

Receiver: either an agent or an officer of the court.

619. A receiver is either (1) an agent appointed out of court by individuals or corporations for the collection or protection of property, or (2) an officer of the court appointed by the court for a similar purpose. Receivers appointed out of court have such powers, duties, and liabilities as are defined by the instrument or statute under which they are appointed and by the general law of agency (*a*).

Instances of appointment out of court.

620. The most familiar instances of appointment out of court are in the cases of mortgages and debentures. Debentures or the covering trust deed usually give an express power to appoint a receiver of the property comprised in the security in certain specified events; but, in the case of mortgages, such a power is usually omitted in reliance on the statutory provisions (*b*), which empower a mortgagee by deed, in certain events (*c*), to appoint a receiver of the mortgaged property with certain specified powers and duties. These statutory provisions with regard to receivers can, however, be varied, or added to, or wholly excluded, by agreement between the mortgagor and mortgagee either in the mortgage itself or in a separate deed (*d*).

Appointment by mortgagee.

(*a*) See, for instance, *Ford* v. *Rackham* (1853), 17 Beav. 485; and see title AGENCY, Vol. I., pp. 145 *et seq.*

(*b*) See Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), ss. 19 (3), 24.

(*c*) See title MORTGAGE, Vol. XXI., pp. 265 *et seq.* In the case of mortgages by deed of land executed prior to the 1st January, 1882, when the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), came into force, the powers conferred on mortgagees by Lord Cranworth's Act, stat. (1860) 23 & 24 Vict. c. 145, ss. 11—24 (now repealed), including the power of appointing a receiver, are still available; see *Re Solomon and Meagher's Contract* (1889), 40 Ch. D. 508; and see title MORTGAGE, Vol. XXI., p. 265.

(*d*) See Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 19 (1), (2), (3); *Re Della Rocella's Estate* (1892), 29 L. R. Ir. 464; and see title MORTGAGE, Vol. XXI., pp. 264, 265. The advantage of a separate deed is that it can be handed to the receiver as evidence of his appointment and of the extent of his powers; see *Gilbert* v. *Dyneley* (1841). 3 Scott (N. R.), 364, 368. It is not unusual in mortgages and debentures to provide for the appointment of a manager as well as of a receiver; see, for instance, *Re Rylands Glass and Engineering Co., Ltd., York City and County Banking Co., Ltd.* v. *The Co.* (1904), 118 L. T. Jo. 87; *Paterson* v. *Gas Light and Coke Co.*, [1896] 2 Ch. 476, 477, C. A.; *Re Hale, Lilley* v. *Foad*, [1899] 2 Ch. 107, C. A. For forms of appointment of a receiver of mortgaged property, see Encyclopædia of Forms and Precedents, Vol. VIII., pp. 908, 910.

PART I. Appointment out of Court.

A receiver appointed by a mortgagee, whether under the statutory power (*e*) or under a power in the mortgage (*f*), is as a general rule the agent of the mortgagor, not of the mortgagee.

Agency.

Though a mortgagee may have a receiver at the expense of the mortgagor, he cannot stipulate to be receiver of the rents and profits himself with a commission (*g*).

Disqualification of mortgagee.

Power to distrain.

If the mortgagor attorns tenant to the receiver, the relation of landlord and tenant thereby constituted justifies distress by the receiver in his own name, notwithstanding that he has no legal reversion to which a right of distress could attach (*h*), but distress cannot be levied by a receiver appointed under the statute (*i*) after the mortgagee's interest in the property has determined (*j*), and a mere agent to receive rents cannot distrain or serve notice to quit (*k*) unless he has also authority to let (*l*).

When foreclosure pending.

When an action for foreclosure is pending, it is desirable that the appointment should be made by the court rather than by the plaintiff mortgagee (*m*).

Appointment by debenture-holders.

621. Debentures issued by a company in the ordinary form, giving a floating charge only, are not mortgages within the meaning of the Conveyancing and Law of Property Act, 1881 (*n*), and debenture-holders are not entitled to appoint a receiver out of court unless expressly authorised to do so by the terms of their security (*o*). It may be, however, that trustees of a debenture trust deed which gives a specific charge on property of the company are mortgagees (*p*) within the meaning of the Act (*n*).

Agency.

A receiver appointed by debenture-holders under a power con-

(*e*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 24 (2); and see, further, title MORTGAGE, Vol. XXI., p. 265.

(*f*) *Jefferys* v. *Dickson* (1866), 1 Ch. App. 183, 190; *Law* v. *Glenn* (1867), 2 Ch. App. 634; *Owen & Co.* v. *Cronk*, [1895] 1 Q. B. 265, C. A.; *Bissell* v. *Ariel Motors* (1906), *Ltd.* (1910), 27 T. L. R. 73; and see title MORTGAGE, Vol. XXI., p. 264. As to receivers appointed by debenture-holders, see the text, *infra*.

(*g*) *Bonithon* v. *Hockmore* (1685), 1 Vern. 316; *Chambers* v. *Goldwin* (1804), 9 Ves. 254, 271; *Langstaffe* v. *Fenwick*, *Fenwick* v. *Langstaffe* (1805), 10 Ves. 405; *Trimleston* (*Lord*) v. *Hamill* (1810), 1 Ball & B. 377; *Leith* v. *Irvine* (1833), 1 My. & K. 277; *Eyre* v. *Hughes* (1876), 2 Ch. D. 148, 161; and see title MORTGAGE, Vol. XXI., p. 242.

(*h*) *Jolly* v. *Arbuthnot* (1859), 4 De G. & J. 224; and see title DISTRESS, Vol. XI., pp. 121, 124, 127, 130, 131.

(*i*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 19; see note (*d*), p. 337, *ante*.

(*j*) *Serjeant* v. *Nash*, *Field & Co.*, [1903] 2 K. B. 304, C. A.

(*k*) *Doe* d. *Mann* v. *Walters* (1830), 10 B. & C. 626; *Ward* v. *Shew* (1833), 9 Bing. 608; *Croghan* v. *Maffett* (1890), 26 L. R. Ir. 664; and see title DISTRESS, Vol. XI., p. 131.

(*l*) *Doe* d. *Manvers* (*Earl*) v. *Mizem* (1837), 2 Mood. & R. 56; and see title LANDLORD AND TENANT, Vol. XVIII., p. 452, note (*a*).

(*m*) *Tillett* v. *Nixon* (1883), 25 Ch. D. 238; see *Bord* v. *Tollemache* (1862), 1 New Rep. 177. See title MORTGAGE, Vol. XXI., p. 262.

(*n*) 44 & 45 Vict. c. 41.

(*o*) *Blaker* v. *Herts and Essex Waterworks Co.* (1889), 41 Ch. D. 399, 406; see *Deyes* v. *Wood*, [1911] 1 K. B. 806, 818, C. A.; and see title COMPANIES, Vol. V., pp. 345, 731. For form of powers in trust deed to appoint a receiver, see Encyclopædia of Forms and Precedents, Vol. V., pp. 55, 82.

(*p*) Hood and Challis on the Conveyancing Acts, 7th ed., p. 85.

ferred by debentures or a covering trust deed in the usual form is regarded as the agent of the company, even if there is no express stipulation to that effect (*q*); but, if the form is unusual and the nature of the powers which the receiver is authorised to exercise is inconsistent with an intention that he should act as the agent of the company, he is regarded as the agent of the debenture-holders (*r*).

Liability of receiver.

622. A receiver appointed out of court, being an agent only, is not *primâ facie* personally liable in respect of transactions properly entered into by him as receiver (*s*). If, however, a receiver gives his personal promise to pay a debt for which his principals may become liable, he is bound thereby (*t*); but the question whether the promise is the personal promise of the agent or the promise only of his principals depends in each case upon the intention of the parties, to be gathered from the terms of the document, if any, containing the promise (*a*). When a debenture trust deed provides that any receiver appointed thereunder shall be the agent of the company, and the company afterwards goes into liquidation so as to be unable any longer to employ agents to bind its property, it may be that the receiver, though not purporting to contract personally, is personally liable on contracts subsequently entered into by him, as for breach of an implied warranty of authority (*b*).

Effect of agency on running of time.

From the fact that a receiver appointed out of court is an agent it follows that any payment on account of a debt, if made within the scope of his authority, may constitute an acknowledgment binding on his principal sufficient to take the case out of the Statutes of Limitation (*c*). Again, a receiver appointed by deed, unlike a receiver appointed by the court, may be constituted an

(*q*) See *Gaskell* v. *Gosling*, [1896] 1 Q. B. 669, C. A., *per* RIGBY, L.J., at pp. 692 *et seq.*; on appeal, *Gosling* v. *Gaskell*, [1897] A. C. 575.

(*r*) *Re Vimbos, Ltd.*, [1900] 1 Ch. 470; *Robinson Printing Co., Ltd.* v. *Chic, Ltd.*, [1905] 2 Ch. 123; *Deyes* v. *Wood*, [1911] 1 K. B. 806, C. A.; and see *Owen & Co.* v. *Cronk*, [1895] 1 Q. B. 265, C. A. As to the position of a receiver of the assets of a company appointed under a power in a security, see, further, *Bissell* v. *Ariel Motors* (1906), *Ltd.* (1910), 27 T. L. R. 73; *Re Goldburg* (No. 2), *Ex parte Page*, [1912] 1 K. B. 606; title COMPANIES, Vol. V., pp. 373, 374.

(*s*) *Owen & Co.* v. *Cronk*, *supra* (where a receiver appointed by debenture-holders received from the manager of the company and paid into his receivership banking account, without any knowledge of its origin, money which had been handed to the manager by the plaintiff firm under protest and "duress of goods": the firm sued the receiver for money had and received to their use, but he was held not personally liable). As to claims for money had and received as between principal and agent, see title CONTRACT, Vol. VII., p. 479; and see also, generally, title AGENCY, Vol. I., pp. 181 *et seq.*, 219 *et seq.*; COMPANIES, Vol. V., pp. 295 *et seq.*

(*t*) *Robinson Printing Co., Ltd.* v. *Chic, Ltd.*, *supra*, at p. 134.

(*a*) *Chapman* v. *Smethurst*, [1909] 1 K. B. 73, 927, C. A.

(*b*) *Collen* v. *Wright* (1857), 8 E. & B. 647, Ex. Ch.; and see *Gosling* v. *Gaskell*, *supra*, at p. 592; titles AGENCY, Vol. I., pp. 221—223; COMPANIES, Vol. V., p. 295; MISREPRESENTATION AND FRAUD, Vol. XX., p. 723.

(*c*) *Re Hale, Lilley* v. *Foad*, [1899] 2 Ch. 107, C. A.; and see title LIMITATION OF ACTIONS, Vol. XIX., p. 72.

PART I. Appointment out of Court.

express trustee, and would formerly have been unable to take the benefit of such statutes (*d*).

Other examples of appointment out of court.

623. Though mortgages and debentures supply the most frequent instances of the appointment of a receiver out of court, such an appointment may be made in a variety of other circumstances, as, for example, by a landowner who desires by this means to secure to annuitants annuities which he has granted out of his estate (*e*), by a mortgagee in possession who resides at a distance from the mortgaged property or who for any other reason finds it impracticable to collect the rents personally (*f*), or by partners who wish to realise the assets of the partnership without the assistance of the court (*g*); a rector might formerly (*h*) have appointed a receiver of the tithes and profits of his rectory to secure charges thereon (*i*). So also a receiver may be appointed under an inspectorship deed to collect and receive for the benefit of creditors all debts and moneys due to the debtor (*k*), and a receiver and manager may be appointed by the trustees of settled estates with the consent of the tenant for life (*l*), or by the guardians of an infant (*m*).

Terms of appointment.

But in all these cases the powers and duties of the receiver must depend on the terms of his appointment (*n*). If the deed of appointment, for instance, is silent as to remuneration, the receiver will be entitled only to a *quantum meruit* (*o*), and if it contains no directions as to the disposition of moneys to be received they will be held on behalf of the appointing party (*p*).

(*d*) *Knight* v. *Bowyer* (1858), 2 De G. & J. 421, C. A.; and see title LIMITATION OF ACTIONS, Vol. XIX., pp. 140, 161 *et seq.* A receiver appointed by the court may be a constructive trustee; see title EQUITY, Vol. XIII., p. 156, and the cases cited *ibid.*, note (*b*); and see title TRUSTS AND TRUSTEES.

(*e*) *Ford* v. *Rackham* (1853), 17 Beav. 485; *Knight* v. *Bowyer* (1858), 2 De G. & J. 421, C. A.; *Cradock* v. *Scottish Provident Institution*, [1893] W. N. 146; and see *Brooks* v. *Greathed* (1820), 1 Jac. & W. 176; *Davis* v. *Marlborough (Duke)* (1819), 2 Swan. 108, 114; and as to annuity deeds generally, see titles MORTGAGE, Vol. XXI., pp. 88, 89; RENTCHARGES AND ANNUITIES, pp. 463 *et seq, post.*

(*f*) *Davis* v. *Dendy* (1818), 3 Madd. 170.

(*g*) *Turner* v. *Major* (1862), 3 Giff. 442; and see title PARTNERSHIP, Vol. XXII., pp. 3 *et seq.*, 85 *et seq.*

(*h*) *I.e.*, between the years 1803 and 1817, when the stat. (1817) 57 Geo. 3, c. 99, revived stat. (1571) 13 Eliz. c. 20, which had been repealed by stat. (1803) 43 Geo. 3, c. 84; see title ECCLESIASTICAL LAW, Vol. XI., p. 615.

(*i*) See *White* v. *Peterborough (Bishop)* (1818), 3 Swan. 109, 110 (appointment made in 1805).

(*k*) *Hobson* v. *Jones* (1870), L. R. 9 Eq. 456. Such a receiver is not regarded as the agent of the inspectors, and they are not liable to account for any moneys misappropriated by the receiver (*ibid.*).

(*l*) See *Bagot* v. *Bagot* (1841), 10 L. J. (CH.) 116; and see title SETTLEMENTS.

(*m*) *Clavering's Case* (1720), Prec. Ch. 535.

(*n*) *Davis* v. *Marlborough (Duke)*, *supra*, at p. 153; and see *Davis* v. *Dendy*, *supra*; *Gilbert* v. *Dyneley* (1841), 3 Scott (N. R.), 364.

(*o*) *Prior* v. *Bagster* (1887), 57 L. T. 760.

(*p*) *Re Vimbos, Ltd.*, [1900] 1 Ch. 470 (where it was held that the liquidator of a company was not entitled in the winding up to call upon a receiver appointed by debenture-holders to hand over the balances in his hands). For forms of clauses providing for the application of money in the hands

Receiver of public undertaking.

624. The receiver of a public undertaking appointed out of court under an Act of Parliament is a public officer and a trustee for the public. He is, therefore, not entitled to make any profit for himself out of moneys passing through his hands, and may be made to account for such profits even after his accounts have been passed and closed (*q*).

Determination of authority.

625. The appointment of a receiver by the court operates as a discharge of a previous appointment out of court by a party to the action (*r*), and the authority of a receiver appointed out of court, as of any other agent, is determined by the death of the principal (*s*).

Part II.—Appointment by the Court.

SECT. 1.—*Jurisdiction.*

General equitable jurisdiction.

626. The appointment of receivers by the court is now generally made under the Judicature Act, 1873 (*a*), s. 25 (8), which provides that a receiver may be appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that such order shall be made. The appointment may be made either before or after judgment, and *a fortiori* by the judgment itself or at the hearing of the action (*b*).

The effect of the statute (*a*) is to extend the jurisdiction to appoint a receiver, formerly exercised by the Court of Chancery, to all divisions of the High Court (*c*), to the Court of Appeal (*d*), and to every inferior court having jurisdiction in equity, or at law and in equity, and in Admiralty respectively, as regards all causes of action within its jurisdiction (*e*).

of receivers, see Encyclopædia of Forms and Precedents, Vol. VIII., pp. 513, 665, 911.

(*q*) *Lonsdale* (*Earl*) v. *Church* (1789), 3 Bro. C. C. 41.

(*r*) *Hand* v. *Blow*, [1901] 2 Ch. 721, 732, C. A.; and see *Re Della Rocella's Estate* (1892), 29 L. R. Ir. 464.

(*s*) *Re Annaly* (*Lord*), *Crawford* v. *Annaly* (*Lord*) (1891), 27 L. R. Ir. 523, 536; but see Conveyancing Act, 1882 (45 & 46 Vict.c. 39), ss. 8, 9; and title AGENCY, Vol. I., pp. 229, 230.

(*a*) 36 & 37 Vict. c. 66.

(*b*) *Beddow* v. *Beddow* (1878), 9 Ch. D. 89, 93; *Anglo-Italian Bank* v. *Davies* (1878), 9 Ch. D. 275, 286, C. A.; *Re Francke, Drake* v. *Francke* (1888), 57 L. J. (CH.) 437; *Re Prytherch, Prytherch* v. *Williams* (1889), 42 Ch. D. 590, 600; see *Smith* v. *Cowell* (1880), 6 Q. B. D. 75, C. A.; *Easton & Co.* v. *Nar Valley Drainage Commissioners* (1892), 8 T. L. R. 649; *Edwards & Co.* v. *Picard*, [1909] 2 K. B. 903, 907, C. A.; and see title EQUITY, Vol. XIII., p. 56.

(*c*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 16.

(*d*) An original motion before the Court of Appeal for the appointment of a receiver may be made by the special leave of that court; see Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 4, 19, 24; R. S. C., Ord. 58, r. 4; *Brenan* v. *Preston* (1852), 2 De G. M. & G. 813, C. A.; *Hyde* v. *Warden* (1876), 1 Ex. D. 309, C. A.; *Chaplin* v. *Young* (1862), 6 L. T. 97.

(*e*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 89. Under this provision receivers may be appointed in the Mayor's Court, London (*Nothard* v. *Proctor*

SECT. 1. Jurisdiction.

In the Chancery Division.

In the King's Bench Division.

In the Probate, Divorce, and Admiralty Division.

627. Of the three Divisions of the High Court, it is still in the Chancery Division, as representing in practice the old Court of Chancery (*f*), that the general jurisdiction to appoint a receiver is most frequently exercised.

In the King's Bench Division receivers are very frequently appointed by way of equitable execution (*g*), but seldom in other cases (*h*).

In the Probate, Divorce, and Admiralty Division the power conferred by the Judicature Act, 1873 (*i*), is not often invoked. In probate cases use is still made of the jurisdiction conferred on the old Court of Probate by the Court of Probate Act, 1857 (*k*), to appoint an administrator *pendente lite* of the personal estate of a deceased person or a receiver of the rents and profits of his real estate (*a*), but appointments may also be made under the Judicature Act, 1873 (*b*).

In divorce cases receivers are sometimes appointed by way of equitable execution under the Judicature Act, 1873 (*c*).

In Admiralty cases a receiver has been appointed in an action of co-ownership at the instance of one of two co-owners (*d*), and also in an action by an equitable mortgagee of ship and freight (*e*),

(1875), 1 Ch. D. 4, C. A.; see title MAYOR'S COURT, LONDON, Vol. XX., p. 286), in the Court of Bankruptcy (*Re Goudie, Ex parte Official Receiver*, [1896] 2 Q. B. 481), in the Palatine Courts of Durham and Lancaster (*Re Connolly Brothers, Ltd., Wood* v. *Connolly Brothers, Ltd.*, [1911] 1 Ch. 731, C. A.; *Minford* v. *Carse*, [1912] 2 I. R. 245; see title COURTS, Vol. IX., pp. 121, 122, 125, 126), and in county courts (*R.* v. *Lincolnshire County Court Judge* (1887), 20 Q. B. D. 167; *Clissold* v. *Cratchley*, [1910] 1 K. B. 374; see County Court Rules, Ord. 13; and title COUNTY COURTS, Vol. VIII., pp. 505, 506). A county court has power to appoint a receiver of the rents and profits of an equity of redemption by way of equitable execution, notwithstanding that it could not have issued the writ of *elegit* which, under the old practice of the High Court, was a necessary preliminary to the appointment (*R.* v. *Selfe*, [1908] 2 K. B. 121).

(*f*) As to this practice, see title EQUITY, Vol. XIII., pp. 42, 54.

(*g*) As to equitable execution, see title EXECUTION, Vol. XIV., pp. 115 *et seq.*

(*h*) As to the limited jurisdiction of a master in the King's Bench Division and of a registrar in the Probate, Divorce, and Admiralty Division, see R. S. C., Ord. 54, r. 12; title EXECUTION, Vol. XIV., p. 122.

(*i*) 36 & 37 Vict. c. 66; see p. 342, *ante*.

(*k*) 20 & 21 Vict. c. 77, ss. 70, 71; see *Grant* v. *Grant* (1869), L. R. 1 P. & D. 654; and title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 201.

(*a*) *Horrell* v. *Witts and Plumley* (1866), L. R. 1 P. & D. 103; *Taylor* v. *Taylor* (1881), 6 P. D. 29; *Salter* v. *Salter*, [1896] P. 291, C. A.; *In the Goods of Messiter-Terry, Mathew* v. *Tooze* (1908), 24 T. L. R. 465; *Shorter* v. *Shorter*, [1911] P. 184.

(*b*) 36 & 37 Vict. c. 66; see *In the Goods of Moore* (1888), 13 P. D. 36; *Re Harrison and Bottomley*, [1899] 1 Ch. 465, 466, C. A.

(*c*) 36 & 37 Vict. c. 66; see *Waddell* v. *Waddell*, [1892] P. 226; *Campbell* v. *Campbell and Davis* (1895), 72 L. T. 294, and see *Gordon* v. *Gordon* (1912), *Times*, 26th November. The old Divorce Court had previously all the powers of the Court of Chancery for enforcing and putting into execution its decrees and orders (Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 52; see title HUSBAND AND WIFE, Vol. XVI., pp. 589, 590).

(*d*) *The Ampthill* (1880), 5 P. D. 224; and see title ADMIRALTY, Vol. I., p. 64.

(*e*) *Burn* v. *Herlofson and Siemensen, The Faust* (1887), 56 L. T. 722,

but applications for a receiver are seldom made in Admiralty actions (*f*).

In district registries.

In the district registries of Liverpool and Manchester a receiver may be appointed where the parties consent, but not in hostile cases, nor, except in an extreme case, where the defendant is an executor or trustee (*g*). In other district registries it has been said that there is no jurisdiction to appoint a receiver (*h*), except by way of equitable execution (*i*).

In courts of summary jurisdiction.

In certain cases (*k*) justices have jurisdiction to appoint receivers.

SECT. 2.—*Application for Appointment.*

SUB-SECT. 1.—*By Whom and how Made.*

By party to an action.

628. An application for the appointment of a receiver under the Judicature Act, 1873 (*l*), must, in general, be made in a properly constituted action. It may be made by any party to the action, or, it would seem, by any person served with notice of, or attending any proceeding in, the action (*m*).

On behalf of infants and lunatics.

629. On behalf of infants a receiver is sometimes appointed without action, though the more usual practice is to appoint a guardian of the person and estate, who is required to enter into a recognisance with sureties like a receiver (*n*).

Receivers may also be appointed under the lunacy jurisdiction on summons in chambers without suit (*o*).

Mortgagees of companies and other public undertakings.

630. In the case of companies carrying on undertakings of a public nature, mortgagees and holders of debenture stock may, in certain circumstances, apply to two justices for the appointment of

C. A.; 6 Asp. M. L. C. 126, C. A.; and see *The Edderside* (1887), 31 Sol. Jo. 744.

(*f*) Williams and Bruce, Admiralty Practice, 3rd ed., 1902, p. 490, n. (k).

(*g*) Directions issued by KEKEWICH, J., in May, 1887, and still acted upon; see Yearly Practice of the Supreme Court, 1913, p. 464.

(*h*) *Walker* v. *Robinson* (1876), 34 L. T. 229; *Re Smith, deceased, Hutchinson* v. *Ward* (1877), 6 Ch. D. 692; *Re Capper, Robertson* v. *Capper* (1878), 26 W. R. 434.

(*i*) R. S. C., Ord. 54, r. 12 (e).

(*k*) See the text, *infra*.

(*l*) 36 & 37 Vict. c. 66, s. 25 (8); see p. 341, *ante*.

(*m*) R. S. C., Ord. 50, r. 6; Ord. 71, r. 1; Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 100; *Topping* v. *Searson* (1862), 6 L. T. 449.

(*n*) *Re Leeming, Re Gascoyne* (1851), 20 L. J. (CH.) 550; *Re Reynolds* (1852), 19 L. T. (O. S.) 311; and see *Pitcher* v. *Helliar* (1781), 2 Dick. 580; 2 Seton, Judgments and Orders, 7th ed., p. 951; Simpson, Law of Infants, 3rd ed., p. 212. It was formerly held that a receiver could not be appointed even in the case of infants unless a cause was pending (*Anon.* (1738), 1 Atk. 489, 578; *Ex parte Whitfield* (1742), 2 Atk. 315; *Ex parte Mountfort* (1809), 15 Ves. 445). The application is made by petition in the Chancery Division; and see titles INFANTS AND CHILDREN, Vol. XVII., p. 128; PRACTICE AND PROCEDURE, Vol. XXIII., pp. 188, 189.

(*o*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 108, 116; Rules in Lunacy, 1892, rr. 19, 83 (Stat. R. & O. Rev., Vol. VIII., Lunatic, England, pp. 3, 12); *Re Browne*, [1894] 3 Ch. 412, C. A. For forms of conveyance and mortgage by such receiver, see Encyclopædia of Forms and Precedents, Vol. VIII., p. 571, Vol. XII., p. 541; see title LUNATICS AND PERSONS OF UNSOUND MIND, Vol. XIX., pp. 414, 418.

SECT. 2. Application for Appointment.

a receiver without commencing an action (*p*), and mortgages under the Metropolis Management Act, 1855 (*q*), and the Public Health Act, 1875 (*r*), may be enforced in a similar way.

A judgment creditor of a railway company may obtain the appointment of a receiver and, if necessary, of a manager of the undertaking of the company, on application by petition in a summary way to the Chancery Division (*s*).

So, also, the holders of mortgage debentures under the Mortgage Debenture Acts, 1865 and 1870 (*t*), may, subject to the provisions of those Acts, obtain the appointment of a receiver by petition or summons at chambers in the Chancery Division (*u*).

Holders of local loans.

Under the Local Loans Act, 1875 (*v*), if a local authority makes default for twenty-one days in payment of an amount not less than £500 due under the Act (*v*), the persons entitled may apply by petition to the county court for the appointment of a receiver of the local rates or property charged (*w*).

Loans on compensation fund.

Under the Licensing (Consolidation) Act, 1910 (*a*), there is a similar provision in case a compensation authority should make default for one month in paying an amount of not less than £50 due in respect of any loan under the Act (*b*).

Tithe rentcharge.

631. The recovery of arrears of tithe rentcharge may similarly be enforced by application to the county court for the appointment of a receiver (*c*).

Practice in King's Bench Division.

632. In the King's Bench Division, where the appointment of receivers is in practice almost entirely confined to cases of equitable execution, the application is made by summons at chambers (*d*).

Practice in Chancery Division.

In the Chancery Division the application is usually by motion in open court, but it may be made by summons at chambers where it

(*p*) Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), ss. 53, 54; Commissioners Clauses Act, 1847 (10 & 11 Vict. c. 16), ss. 86, 87; Companies Clauses Act, 1863 (26 & 27 Vict. c. 118), ss. 25, 26; and see title COMPANIES, Vol. V., pp. 737, 738.

(*q*) 18 & 19 Vict. c. 120, s. 188; and see title METROPOLIS, Vol. XX., p. 448.

(*r*) 38 & 39 Vict. c. 55, s. 239; see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., p. 385.

(*s*) Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 4, made perpetual by stat. (1875) 38 & 39 Vict. c. 31; see Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 34; and see title RAILWAYS AND CANALS, Vol. XXIII., pp. 765, 766.

(*t*) 28 & 29 Vict. c. 78; 33 & 34 Vict. c. 20.

(*u*) See Mortgage Debenture Act, 1865 (28 & 29 Vict. c. 78), ss. 41—47.

(*v*) 38 & 39 Vict. c. 83.

(*w*) Local Loans Act, 1875 (38 & 39 Vict. c. 83), s. 12; County Court Rules, Ord. 50, r. 6; and see titles COUNTY COURTS, Vol. VIII., pp. 666, 667; MONEY AND MONEY-LENDING, Vol. XXI., p. 63.

(*a*) 10 Edw. 7 & 1 Geo. 5, c. 24; see title INTOXICATING LIQUORS, Vol. XVIII., p. 73.

(*b*) Licensing Rules, 1910, r. 71 (Stat. R. & O. 1910, p. 265). For the practice, see County Court Rules, Ord. 50, r. 58.

(*c*) Tithe Act, 1891 (54 & 55 Vict. c. 8); see Tithe Rentcharge Recovery Rules, 1891 (Stat. R. & O. Rev., Vol. III., County Court, England, p. 578); and see title ECCLESIASTICAL LAW, Vol. XI., p. 749.

(*d*) For the practice, see, further, title EXECUTION, Vol. XIV., pp. 122—124.

relates to the management of property, and all the parties beneficially interested consent (*e*), or where it is for the appointment of a receiver in place of one who has died or resigned (*f*), or where the action has been commenced by originating summons (*g*), and it should be so made in cases of equitable execution (*h*).

Plaintiff suing on behalf of a class.

633. When a plaintiff suing on behalf of a class obtains an order for a receiver, any member of the class who objects should apply by summons to be made a defendant in the action, so that he may take steps to get rid of the order or to take the conduct of the proceedings out of plaintiff's hands. He is not allowed to intervene simply by appealing against the order (*i*).

When appointment may be made although not claimed by writ.

634. It is not necessary that the appointment of a receiver should have been claimed by the writ or even by the statement of claim (*k*), unless such appointment is a substantial part of the relief sought (*l*). Leave to amend the writ will be given if necessary (*m*). Similarly a receiver may be appointed in the Court of Appeal, though the appointment has not been asked for in the court below (*n*).

Foreclosure action.

It is not necessary, in a foreclosure action, to proceed by writ rather than by originating summons in order to get a receiver appointed (*o*).

SUB-SECT. 2.—*Time for Making Application.*

Action must as a rule be pending.

635. As a rule the court cannot appoint a receiver unless there is a *lis pendens* (*p*), and caveat proceedings in the Probate Division do not constitute a *lis pendens* (*q*); but, when the defendant to a contemplated action is out of the jurisdiction, and the writ cannot

(*e*) R. S. C., Ord. 55, r. 2 (13); *Blackborough* v. *Ravenhill* (1852), 16 Jur. 1085; and see the receivership order in *Wade-Gery* v. *Handley* (1876), 1 Ch. D. 653, set out in 1 Seton, Judgments and Orders, 6th ed., p. 758. As to applications in certain special cases, see pp. 343, 344, *ante*.

(*f*) *Grote* v. *Bing* (1852), 1 W. R. 80; *Booth* v. *Coulton* (1868), 16 W. R. 683.

(*g*) *Re Francke, Drake* v. *Francke* (1888), 57 L. J. (CH.) 437.

(*h*) *Re Hartley, Nuttall* v. *Whittaker* (1892), 66 L. T. 588; and, as to the practice, see, further, title EXECUTION, Vol. XIV., pp. 122—124.

(*i*) *Watson* v. *Cave* (No. 1) (1881), 17 Ch. D. 19, C. A.; *Fraser* v. *Cooper, Hall & Co.* (1882), 21 Ch. D. 718; *Debenture Corporation* v. *de Murietta (C.) & Co., Ltd.* (1892), 8 T. L. R. 496.

(*k*) *Malcolm* v. *Montgomery* (1824), 2 Mol. 500; *Osborne* v. *Harvey* (1841), 1 Y. & C. Ch. Cas. 116; *Bowman* v. *Bell* (1844), 14 Sim. 392; *Wright* v. *Vernon* (1855), 3 Drew. 112; *Brooker* v. *Brooker* (1857), 3 Sm. & G. 475, 477; *Salt* v. *Cooper* (1880), 16 Ch. D. 544, C. A.

(*l*) *Colebourne* v. *Colebourne* (1876), 1 Ch. D. 690.

(*m*) *Re Lloyd, Allen* v. *Lloyd* (1879), 12 Ch. D. 447.

(*n*) *Chaplin* v. *Young* (1862), 6 L. T. 97; *Hyde* v. *Warden* (1876), 1 Ex. D. 309, C. A.

(*o*) *Gee* v. *Bell* (1887), 35 Ch. D. 160; *Weston* v. *Levy*, [1887] W. N. 76; *Barr* v. *Harding* (1887), 36 W. R. 216; *County of Gloucester Bank* v. *Rudry Merthyr Steam and House Coal Colliery Co.*, [1895] 1 Ch. 629, C. A.; *Ingham* v. *Sutherland* (1890), 63 L. T. 614; and see title MORTGAGE, Vol. XXI., p. 283.

(*p*) *Salter* v. *Salter*, [1896] P. 291, C. A. For exceptions to the rule, *e.g.*, as to lunatics, see p. 343, *ante*, and, for other cases, see pp. 343, 344, *ante*.

(*q*) *Salter* v. *Salter*, *supra*; see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 201.

SECT. 2. Application for Appointment.

in consequence be issued without leave of the court, it is conceived that, if a case of emergency is made out, a receiver may be appointed on an *ex parte* application and leave given for the issue of the writ by the same order (*r*).

Ex parte application.

Service of writ or summons before appointment.

636. When an action has been commenced, the writ or originating summons must as a rule be served on the defendant before a receiver can be appointed (*s*). A receiver is not as a rule appointed if the persons principally interested in the property to be affected are not before the court (*t*); but if the defendant has absconded, or if for any other reason it is found impossible to serve him, or if there is imminent danger of the property being lost, a receiver may be appointed before service on an *ex parte* application supported by affidavit (*u*).

Notice as a rule essential.

637. When the writ has been served, notice should be given, if possible, to the defendant of any intended application for a receiver. A receiver is not appointed on an *ex parte* motion, either before or after appearance, in the absence of special circumstances (*a*); and *ex parte* applications for the appointment of a receiver by way of equitable execution are not granted, except in case of special emergency (*b*). Though a defendant has not appeared to the writ, an attempt should still be made to serve him personally with notice of any motion or summons for a receiver. It is not enough to file documents in the Central Office of the High Court as in default of appearance (*c*).

(*r*) *Young* v. *Brassey* (1875), 1 Ch. D. 277 (where an injunction was so granted).

(*s*) *Stratton* v. *Davidson* (1830), 1 Russ. & M. 484; *Browne* v. *Blount* (1830), 2 Russ. & M. 83.

(*t*) *Shaw* v. *Shore* (1835), 5 L. J. (CH.) 79.

(*u*) *Pitcher* v. *Helliar* (1781), 2 Dick. 580; *Maguire* v. *Allen* (1809), 1 Ball & B. 75; *Quin* v. *Gunn* (1823), 1 Hog. 75; *Tanfield* v. *Irvine* (1826), 2 Russ. 149; *Gibbins* v. *Mainwaring* (1837), 9 Sim. 77; *Noad* v. *Backhouse* (1843), 2 Y. & C. Ch. Cas. 529; *Barrett* v. *Mitchell* (1843), 5 I. Eq. R. 501; *Dowling* v. *Hudson* (1851), 14 Beav. 423; *London and South Western Bank* v. *Facey* (1871), 24 L. T. 126; *Re H.'s Estate, H.* v. *H.* (1875), 1 Ch. D. 276; *Crane* v. *Jullion* (1876), 2 Ch. D. 220; and see *Colebourne* v. *Colebourne* (1876), 1 Ch. D. 690; *Re Pountain* (1888), 37 Ch. D. 609, C. A. (a lunacy case); *In the Goods of Messiter-Terry, Mathew* v. *Tooze* (1908), 24 T. L. R. 465 (receiver appointed before citation in a probate action).

(*a*) *Meaden* v. *Sealey* (1849), 6 Hare, 620; *Caillard* v. *Caillard* (1858), 25 Beav. 512; *Steer* v. *Steer* (1864), 2 Drew. & Sm. 311; *Blackett* v. *Blackett* (1871), 24 L. T. 276; *Taylor* v. *Eckersley* (1876), 2 Ch. D. 302, C. A.; *Piperno* v. *Harmston* (1886), 3 T. L. R. 219, C. A., *per* LINDLEY, L.J., at p. 220; *Re Patrick, Bills* v. *Tatham* (1888), 32 Sol. Jo. 798; *Re Connolly Brothers, Ltd., Wood* v. *Connolly Brothers, Ltd.*, [1911] 1 Ch. 731, 742, C. A. In Ireland the order for the appointment of a new receiver in place of one who has died is sometimes made on an *ex parte* motion (*Molloy* v. *Hamilton* (1874), 8 I. R. Eq. 499; *Re Stone and Lauder* (1875), 9 I. R. Eq. 404).

(*b*) *Lucas* v. *Harris* (1886), 18 Q. B. D. 127, 134, C. A.; *Re Potts, Ex parte Taylor*, [1893] 1 Q. B. 648, 661, 662, C. A.; *Minter* v. *Kent, Sussex and General Land Society* (1895), 72 L. T. 186, C. A.; *Re Goudie, Ex parte Official Receiver*, [1896] 2 Q. B. 481; see *Lloyd's Bank, Ltd.* v. *Medway Upper Navigation Co.*, [1905] 2 K. B. 359, C. A. *Fuggle* v. *Bland* (1883), 11 Q. B. D. 711, no longer represents the practice on this point.

(*c*) R. S. C., Ord. 67, r. 4; *Tilling, Ltd.* v. *Blythe*, [1899] 1 Q. B. 557, C. A.

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Application by defendant.

638. Though a plaintiff may in an urgent case apply for the appointment of a receiver even before service of the writ, a defendant can only apply after he has appeared to the writ, and then only on notice to the plaintiff (*d*); nor can he apply without first filing a counterclaim or a writ in a cross-action, unless his claim to relief arises out of the plaintiff's cause of action or is incidental to it (*e*).

Effect of death of defendant.

639. Though the death of a party does not cause abatement (*f*), a receiver cannot be appointed over the property of a deceased defendant until some duly constituted representative is before the court (*g*). In an administration action, however, a receiver may be appointed, notwithstanding the death of the sole defendant and executrix, on the plaintiff's undertaking to obtain forthwith the appointment of himself or some other person as administrator *de bonis non* (*h*).

When application may be made after judgment or order.

640. A receiver cannot be appointed in a foreclosure action after order for foreclosure absolute, for this brings the proceedings to an end as far as the court is concerned (*i*), but it is otherwise in the case of actions for money demands, where the process of the court may still be invoked to enforce what is on the face of it a final judgment (*k*); and a receiver may be appointed after an order for administration or for foreclosure *nisi* if a proper case is made out (*l*), or after judgment in a partition action pending an appeal (*m*).

SUB-SECT. 3.—*Evidence in Support.*

Affidavits in support.

641. The affidavits in support of an application for a receiver should show the nature of the applicant's interest in the property, unless there is already on the pleadings an admission of title sufficient to give the applicant a *locus standi* (*n*), and the grounds on which he alleges that it is just and convenient that a receiver should

(*d*) R. S. C., Ord. 50, r. 6; *Daw* v. *Herring* (1891), 35 Sol. Jo. 752; but see, *contra*, *Hick* v. *Lockwood*, [1883] W. N. 48.

(*e*) *Carter* v. *Fey*, [1894] 2 Ch. 541, C. A., distinguishing *Sargant* v. *Read* (1876), 1 Ch. D. 600, and *Porter* v. *Lopes* (1877), 7 Ch. D. 358; and see *Collison* v. *Warren*, [1901] 1 Ch. 812, C. A.; *Robinson* v. *Hadley* (1849), 11 Beav. 614; *Barlow* v. *Gains* (1845), 8 Beav. 329.

(*f*) R. S. C., Ord. 17, r. 1.

(*g*) *Re Shephard, Atkins* v. *Shephard* (1889), 43 Ch. D. 131, C. A., doubting *Manchester and Liverpool District Banking Co.* v. *Parkinson* (1888), 22 Q. B. D. 173, C. A.; and see *Penney* v. *Todd* (1878), 26 W. R. 502.

(*h*) *Re Parker, deceased, Cash* v. *Parker* (1879), 12 Ch. D. 293; *Re Clark, Clark* v. *Clark*, [1910] W. N. 234; see *Waddell* v. *Waddell*, [1892] P. 226 (where the widow entitled to administration had apparently submitted to the jurisdiction of the court); and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 228.

(*i*) *Wills* v. *Luff* (1888), 38 Ch. D. 197; compare *Ingham* v. *Sutherland* (1890), 63 L. T. 614.

(*k*) *Salt* v. *Cooper* (1880), 16 Ch. D. 544, C. A.

(*l*) *Bowman* v. *Bell* (1844), 14 Sim. 392; *Thomas* v. *Davies* (1847), 11 Beav. 29; *Re Bywater's Estate, Sargent* v. *Johnson* (1855), 1 Jur. (N. S.) 227; *Brooker* v. *Brooker* (1857), 3 Sm. & G. 475; *Weston* v. *Levy* (1887), 31 Sol. Jo. 364.

(*m*) *Wright* v. *Vernon* (1855), 3 Drew. 112.

(*n*) *Norway* v. *Rowe* (1812), 19 Ves. 144.

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be appointed (*o*). It is conceived that it is no longer necessary that the evidence should be confined to the allegations in the pleadings (*p*). If it is asked that a named person should be appointed, an affidavit of his fitness for the post will also be required (*q*).

Affidavits sworn before action.

642. An affidavit sworn before action is valueless, even though filed after issue of the writ (*r*), but the court sometimes makes an order on such an affidavit, the applicant undertaking to have it resworn and refiled (*s*); and, exceptionally, when the defendant to a contemplated action is out of the jurisdiction and a writ cannot in consequence be issued without an application to the court (*t*), an affidavit in support of the application may be read, entitled in the matter of the Judicature Acts and of the contemplated action (*u*).

SECT. 3.—*Grounds of Appointment.*

SUB-SECT. 1.—*In General* (*v*).

General statutory jurisdiction.

643. The court has now statutory power to appoint a receiver whenever it appears just or convenient (*w*), and in exercise of this power it appoints a receiver in many cases in which the old Court of Chancery would not, as a matter of practice, have intervened (*a*); but the appointment is discretionary, and in cases where the Court of Chancery had previously no jurisdiction to appoint a receiver the court does not exercise the statutory power conferred on it (*b*).

Cases in which appointment will be made.

644. Thus, a receiver may be appointed pending an action for trespass (*c*) or at the instance of a legal mortgagee (*d*), even

(*o*) See pp. 350 *et seq.*, *post*.

(*p*) As to the former practice, see *Dawson* v. *Yates* (1839), 1 Beav. 301; *Cremen* v. *Hawkes* (1845), 2 Jo. & Lat. 674; *Wright* v. *Vernon* (1855), 3 Drew. 112.

(*q*) See Yearly Practice of the Supreme Court, 1913, p. 715.

(*r*) *Silber* v. *Lewin* (1889), 33 Sol. Jo. 757.

(*s*) *Green* v. *Prior*, [1886] W. N. 50; *Re Abbott's Trade-Mark* (1904), 48 Sol. Jo. 351.

(*t*) R. S. C., Ord. 2, r. 4.

(*u*) See *Young* v. *Brassey* (1875), 1 Ch. D. 277, cited note (*r*), p. 346, *ante*.

(*v*) For the grounds of appointment in particular cases, see titles COMPANIES, Vol. V., pp. 376, 377, 737, 738; MORTGAGE, Vol. XXI., pp. 261 *et seq.*; PARTNERSHIP, Vol. XXII., pp. 77, 78; TRUSTS AND TRUSTEES.

(*w*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (8). As to the meaning of "just or convenient," see title INJUNCTION, Vol. XVII., p. 202.

(*a*) *Cummins* v. *Perkins*, [1899] 1 Ch. 16, C. A., *per* LINDLEY, L.J., at p. 20. As to the former practice in equity, see title EQUITY, Vol. XIII., pp. 54, 55.

(*b*) *Philips* v. *Jones* (1884), 28 Sol. Jo. 360, C. A.; *Holmes* v. *Millage*, [1893] 1 Q. B. 551, C. A.; *Harris* v. *Beauchamp Brothers*, [1894] 1 Q. B. 801, C. A.; and see *North London Rail. Co.* v. *Great Northern Rail. Co.* (1883), 11 Q. B. D. 30, C. A.; *Kitts* v. *Moore*, [1895] 1 Q. B. 253, C. A.; *Cummins* v. *Perkins*, *supra*, at p. 20; *Willis* v. *Cooper* (1900), 44 Sol. Jo. 698. As to when an appointment will be made by way of equitable execution, see title EXECUTION, Vol. XIV., pp. 115 *et seq.*

(*c*) *Percy* v. *Thomas* (1884), 28 Sol. Jo. 533; *Cummins* v. *Perkins*, *supra*, at p. 20; see title TRESPASS.

(*d*) *Tillett* v. *Nixon* (1883), 25 Ch. D. 238; *Pease* v. *Fletcher* (1875), 1

after he has taken possession (*e*), if the circumstances render it just and convenient (*f*). So, also, a receiver may be appointed of the rents and profits of land vested in legal tenants in common or joint tenants, even though no case of exclusion be made out (*g*); or of the estate of a deceased person notwithstanding that no legal representative has been constituted and no probate proceedings are pending (*h*); or at the instance of a judgment creditor notwithstanding that he has not taken advantage of the legal remedies open to him (*i*), provided the circumstances render it just and convenient (*k*). So an order for the payment of money into court may be enforced by the appointment of a receiver (*l*).

In cases of disputed title.

645. In cases of disputed title to land, the former rule was that the court would not interfere with the party in possession unless his title was obviously defective (*m*) or was affected by some equity (*n*), or the rents were in danger of being lost (*o*) or the property in danger of destruction (*p*). Now, however, an interlocutory application for a receiver by a person asserting a purely legal title will

Ch. D. 273; *Truman & Co.* v. *Redgrave* (1881), 18 Ch. D. 547; *Grafton (Duke)* v. *Taylor, Manvers (Earl)* v. *Taylor* (1891), 7 T. L. R. 588; and see *Re Pope* (1886), 17 Q. B. D. 743, 749, C. A.; *Re Whiteley, Whiteley* v. *Learoyd* (1887), 56 L. T. 846, 847; title MORTGAGE, Vol. XXI., pp. 261, 262.

(*e*) *Mason* v. *Westoby* (1886), 32 Ch. D. 206; *County of Gloucester Bank* v. *Rudry Merthyr Steam and House Coal Colliery Co.*, [1895] 1 Ch. 629, C. A.

(*f*) *Re Prytherch, Prytherch* v. *Williams* (1889), 42 Ch. D. 590.

(*g*) *Porter* v. *Lopes* (1877), 7 Ch. D. 358; *Hills* v. *Webber* (1901), 17 T. L. R. 513, C. A.; and see *The Ampthill* (1880), 5 P. D. 224 (co-owners of ship).

(*h*) *Re Parker, Dearing* v. *Brooks* (1885), 54 L. J. (CH.) 694; *In the Estate of Cleaver*, [1905] P. 319; *Re Dawson, Clarke* v. *Dawson* (1906), 75 L. J. (CH.) 201; see p. 353, *post;* title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 202.

(*i*) *Re Watkins, Ex parte Evans* (1879), 13 Ch. D. 252, C. A.; *Re Pope, supra; Re Whiteley, Whiteley* v. *Learoyd, supra; Bryant* v. *Bull, Bull* v. *Bryant* (1878), 10 Ch. D. 153; and see title EXECUTION, Vol. XIV., pp. 122 *et seq.*

(*k*) *Manchester and Liverpool District Banking Co.* v. *Parkinson* (1888), 22 Q. B. D. 173, C. A.

(*l*) *Stanger Leathes* v. *Stanger Leathes*, [1882] W. N. 71; *Re Coney, Coney* v. *Bennett* (1885), 29 Ch. D. 993; *Re Whiteley, Whiteley* v. *Learoyd, supra.*

(*m*) *Fingal (Earl)* v. *Blake* (1828), 1 Mol. 113; (1829), 2 Mol. 50; *Metcalfe* v. *Pulvertoft* (1813), 1 Ves. & B. 180; *Clark* v. *Dew* (1829), 1 Russ. & M. 103.

(*n*) *Stilwell* v. *Wilkins* (1821), Jac. 280; Madd. & G. 49; *Podmore* v. *Gunning* (1832), 5 Sim. 485; *Clegg* v. *Fishwick* (1849), 1 Mac. & G. 294; and see *Berry* v. *Keen* (1882), 51 L. J. (CH.) 912, C. A.; *Bainbrigge* v. *Baddeley* (1850), 13 Beav. 355, *per* Lord LANGDALE, M.R., at p. 361.

(*o*) *Mordaunt* v. *Hooper* (1756), Amb. 311; and see *Knight* v. *Duplessis* (1749), 1 Ves. Sen. 324; *Clark* v. *Dew, supra; Lloyd* v. *Trimleston (Lord)* (1829), 2 Mol. 81; *Lancashire* v. *Lancashire* (1845), 9 Beav. 120.

(*p*) See, generally, *Bainbrigge* v. *Baddeley* (1851), 3 Mac. & G. 413; *Talbot* v. *Hope Scott* (1858), 4 K. & J. 96; *Campbell* v. *Campbell* (1864), 4 Macq. 711, H. L.; *Carrow* v. *Ferrior, Dunn* v. *Ferrior* (1868), 3 Ch. App. 719; *Hitchen* v. *Birks* (1870), L. R. 10 Eq. 471; *Parkin* v. *Seddons* (1873), L. R. 16 Eq. 34; *Ridgway* v. *Roberts* (1844), 4 Hare, 106 (disputed title to a ship); *Dobbin* v. *Adams* (1845), 8 I. Eq. R. 157; *Fetherstone* v. *Mitchell* (1846), 9 I. Eq. R. 480.

SECT. 3. **Grounds of Appointment.**

be entertained, and a receiver will be appointed if the court thinks that the plaintiff will probably succeed at the hearing and that, in all the circumstances of the case, the appointment is just and convenient (*q*).

Considerations upon which order made.

The court considers the relative merits of the competing titles, notwithstanding that this may in effect deprive the defendant in an ejectment action of his privilege of not disclosing his title (*r*), and it also takes into consideration the length of the defendant's possession (*s*) and the position of the tenants, who might be called upon to pay their rents over again if the party in possession were not solvent (*a*). Similarly, a landlord suing to recover possession of demised premises as for breach of covenant may obtain a receiver of the rents and profits pending trial, if he shows a probability of success at the hearing (*b*), or if the circumstances render it just and convenient (*c*).

Vacant or adverse possession.

646. If no one is in possession of the property the court will appoint a receiver almost as of course, to prevent a scramble and to preserve the property until the rights of the parties are ascertained (*d*); and similarly a receiver will be appointed in an urgent case to prevent a stranger to the suit from obtaining a title by adverse possession (*e*).

SUB-SECT. 2.—*To Preserve Property.*

General ground on which appointment made.

647. Apart from appointments by way of equitable execution (*f*), or to enforce a charge (*g*), the general ground on which the court appoints a receiver is ultimately in every case the protection or preservation of property for the benefit of persons who have an interest in it. On this ground receivers are constantly appointed pending the trial of an action (*h*) or pending the

(*q*) *Berry* v. *Keen* (1882), 51 L. J. (CH.) 912, C. A.; *Crane* v. *Jullion* (1876), 2 Ch. D. 220; *John* v. *John*, [1898] 2 Ch. 573, C. A., distinguishing *Foxwell* v. *Van Grutten*, [1897] 1 Ch. 64, C. A.; *Real and Personal Advance Co.* v. *McCarthy and Smith* (1879), 40 L. T. 878.

(*r*) See R. S. C., Ord. 21, r. 21; *John* v. *John*, *supra*, at p. 580.

(*s*) *John* v. *John*, *supra*; and see *Jones* v. *Jones* (1817), 3 Mer. 161.

(*a*) *John* v. *John*, *supra*; and see *Hitchen* v. *Birks* (1870), L. R. 10 Eq. 471.

(*b*) *Charrington & Co., Ltd.* v. *Camp*, [1902] 1 Ch. 386; *Leney & Sons, Ltd.* v. *Callingham and Thompson*, [1908] 1 K. B. 79, C. A.; and see title LANDLORD AND TENANT, Vol. XVIII., p. 541.

(*c*) *Gwatkin* v. *Bird* (1882), 52 L. J. (Q. B.) 263.

(*d*) *White* v. *Smale* (1856), 22 Beav. 72; *Owen and Gutch* v. *Homan* (1853), 4 H. L. Cas. 997, 1032; *Talbot* v. *Hope Scott* (1858), 4 K. & J. 96; *Palmer* v. *Wright* (1846), 10 Beav. 234.

(*e*) *Thomas* v. *Davies* (1847), 11 Beav. 29.

(*f*) See titles EXECUTION, Vol. XIV., p. 116; RAILWAYS AND CANALS, Vol. XXIII., p. 765.

(*g*) *Curling* v. *Townshend* (*Marquis*) (1816), 19 Ves. 628, 633; and see p. 340, *ante*.

(*h*) *Free* v. *Hinde* (1827), 2 Sim. 7; *Tullett* v. *Armstrong* (1836), 1 Keen, 428; *Richards* v. *Goold* (1827), 1 Mol. 22; *Kelly* v. *Butler* (1839), 1 I. Eq. R. 435; *Dawson* v. *Yates* (1839), 1 Beav. 301; *Bartley* v. *Bartley* (1845), 9 Jur. 224; *Bainbrigge* v. *Bainbrigge* (1850), 20 L. J. (CH.) 139; *Fripp* v. *Chard Rail. Co.*, *Fripp* v. *Bridgewater and Taunton Canal and Stolford Rail. and Harbour Co.* (1853), 11 Hare, 241; *White* v. *Smale*, *supra*; *Taylor* v. *Eckersley* (1876), 2 Ch. D. 302, C. A.

constitution of a legal representative of a deceased person (*i*), or, if necessary, pending a reference to arbitration (*j*) or the trial of an interpleader issue (*k*), or pending proceedings in another court (*l*).

Actions relating to sale of land.

648. Thus, in actions for the specific performance or rescission of contracts for the sale of land, and especially of mining property, a receiver, and if necessary a manager, is frequently appointed to preserve the property until the right is decided (*m*), and an unpaid vendor may have a receiver with a view to enforcing his lien (*n*).

Partnership and partition.

649. In a partnership action, the fact that the surviving partner is endeavouring to divert the goodwill of the business to himself is sufficient ground for the appointment of a receiver and manager at the instance of the representative of a deceased partner (*o*). One of several legal co-owners may have a receiver pending a partition action if the rents are in danger of being lost (*p*); or a receiver may be appointed after decree in a partition action to ensure due receipt of rents and provision for outgoings pending an appeal (*q*).

Interest in a fund.

Again, any plaintiff who has a right to be paid out of a particular fund is entitled to an injunction or a receiver to prevent that fund being dissipated so as to defeat his rights (*r*), and receivers are frequently appointed to protect the estates of infants (*s*).

Infants.

(*i*) *King* v. *King* (1801), 6 Ves. 172; *Wood* v. *Hitchings* (1840), 2 Beav. 289; *Owen and Gutch* v. *Homan* (1853), 4 H. L. Cas. 997, 1032; *Nothard* v. *Proctor* (1875), 1 Ch. D. 4, C. A.; *Re Shephard, Atkins* v. *Shephard* (1889), 43 Ch. D. 131, 132, C. A.; *In the Goods of Messiter-Terry, Mathew* v. *Tooze* (1908), 24 T. L. R. 465; and see p. 353, *post*.

(*j*) *Plews* v. *Baker* (1873), L. R. 16 Eq. 564; *Halsey* v. *Windham*, [1882] W. N. 108; *Compagnie du Senegal* v. *Woods & Co.* (1883), 53 L. J. (CH.) 166; *Pini* v. *Roncoroni*, [1892] 1 Ch. 633.

(*k*) *Howell* v. *Dawson* (1884), 13 Q. B. D. 67.

(*l*) *Brenan* v. *Preston* (1852), 2 De G. M. & G. 813, 839, 840, C. A.; *Wright* v. *Vernon* (1855), 3 Drew. 112; *Transatlantic Co.* v. *Pietroni* (1860), John. 604.

(*m*) *Boehm* v. *Wood* (1820), 2 Jac. & W. 236; *Stilwell* v. *Wilkins* (1821), Jac. 280; *Portman* v. *Mill* (1839), 3 Jur. 356; *Gibbs* v. *David* (1875), L. R. 20 Eq. 373 (rescission); *Hyde* v. *Warden* (1876), 1 Ex. D. 309, C. A.; *Cook* v. *Andrews*, [1897] 1 Ch. 266 (rescission); see title SPECIFIC PERFORMANCE.

(*n*) *Munns* v. *Isle of Wight Rail. Co.* (1870), 5 Ch. App. 414; *St. Germans (Earl)* v. *Crystal Palace Rail. Co.* (1871), L. R. 11 Eq. 568; *Williams* v. *Aylesbury and Buckingham Rail. Co.* (1873), 28 L. T. 547; *Ware* v. *Aylesbury and Buckingham Rail. Co.* (1873), 28 L. T. 893; *Boyle* v. *Bettws Llantwit Colliery Co.* (1876), 2 Ch. D. 726; *Poole* v. *Downes* (1897), 76 L. T. 110; but a receiver will not be appointed against a railway company before judgment (*Latimer* v. *Aylesbury and Buckingham Rail. Co.* (1878), 9 Ch. D. 385, C. A.).

(*o*) *Young* v. *Buckett* (1882), 46 L. T. 266, and, generally, for the grounds on which a receiver may be appointed in partnership actions, see title PARTNERSHIP, Vol. XXII., pp. 77, 78.

(*p*) *Hargrave* v. *Hargrave* (1846), 9 Beav. 549; *Searle* v. *Smales* (1855), 3 W. R. 437.

(*q*) *Wright* v. *Vernon* (1855), 3 Drew. 112; and see title PARTITION, Vol. XXI., p. 850.

(*r*) *Cummins* v. *Perkins*, [1899] 1 Ch. 16, 19, C. A.

(*s*) *Kiffin* v. *Kiffin* (undated), cited in *Beaufort (Duke)* v. *Berty* (1721), 1 P. Wms. 703, 705; *Dillon* v. *Mount-Cashell (Lady)* (1727), 4 Bro. Parl. Cas.

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Against trustees.

650. The fact that trustees are not holding an even hand, but are receiving rents on behalf of one only of several claimants to the property, may justify the appointment of a receiver even before trial, if the applicant shows a *primâ facie* title (*a*). Loss of trust funds, too, is *primâ facie* evidence of a breach of trust sufficient to justify the appointment of a receiver (*b*); and a trustee of leasehold property, alleging that his co-trustees refuse to make any provision out of rents and profits for repairs, may obtain the appointment of a receiver in the interests of remaindermen to preserve the lease from risk of forfeiture (*c*).

Against tenant for life.

651. If a tenant for life of renewable leaseholds threatens to allow, or actually allows, the lease to expire, the remaindermen may have a receiver appointed in order to provide a fund for renewal or compensation as the case may be (*d*). A receiver of rents and profits may also be appointed against a tenant for life who, by refusing to produce title deeds, prevents the raising, by sale, of portions which have priority over his life interest (*e*). On the completion of a sale under order of the court, the vendor may have a receiver appointed to secure arrears of rent due to him (*f*).

Against debtor under trust deed.

Trustees of a creditors' deed may obtain the appointment of a receiver against the debtor if he is shown to be wasting his assets in breach of covenants (*g*).

In other cases.

652. In numberless other cases persons who show a *primâ facie* interest in property of any sort may, in a properly constituted action, if it appears to the court to be just and convenient, have a receiver appointed for its protection; but the appointment is not made unless the property is in danger (*h*).

Applicant's interest.

653. The applicant must satisfy the court that he has an interest in the property to be affected (*i*). A landlord, for instance, has not,

306; *Bridges* v. *Hales* (1729), Mos. 108, 111; *Re Cormicks, Minors* (1840), 2 I. Eq. R. 264; *Whitelaw* v. *Sandys* (1848), 12 I. Eq. R. 393; and see title INFANTS AND CHILDREN, Vol. XVII., pp. 106, 125.

(*a*) *Talbot* v. *Hope Scott* (1858), 4 K. & J. 96.

(*b*) *Evans* v. *Coventry* (1854), 5 De G. M. & G. 911, 918, C. A.

(*c*) *Re Fowler, Fowler* v. *Odell* (1881), 16 Ch. D. 723; and see, generally, title TRUSTS AND TRUSTEES.

(*d*) *Bennett* v. *Colley* (1833), 2 My. & K. 225.

(*e*) *Brigstocke* v. *Mansel* (1818), 3 Madd. 47; and as to non-production of title deeds, see *Shee* v. *Harris* (1844), 1 Jo. & Lat. 91.

(*f*) *Quin* v. *Holland* (1745), Ridg. *temp.* H. 295.

(*g*) *Riches* v. *Owen* (1868), 3 Ch. App. 820; and see *Waterlow* v. *Sharp, Gardner* v. *Sharp*, [1867] W. N. 64.

(*h*) *King* v. *King* (1801), 6 Ves. 172; *George* v. *Evans* (1840), 4 Y. & C. (EX.) 211; *Hackett* v. *Snow* (1847), 10 I. Eq. R. 220; *Bainbrigge* v. *Baddeley* (1851), 3 Mac. & G. 413; *Hitchen* v. *Birks* (1870), L. R. 10 Eq. 471; *Thorn* v. *Nine Reefs, Ltd.* (1892), 67 L. T. 93, C. A.; *Brydges* v. *Brydges and Wood*, [1909] P. 187, 188, C. A.; see *Foxwell* v. *Van Grutten*, [1897] 1 Ch. 64, C. A.; *Law* v. *Garrett* (1878), 8 Ch. D. 26, C. A.; *Harris* v. *Beauchamp Brothers*, [1894] 1 Q. B. 801, 810; *Micklethwait* v. *Micklethwait* (1857), 1 De G. & J. 504, 530, C. A.; *Barton* v. *Rock* (1856), 22 Beav. 81, 376; *Jones* v. *Frost* (1818), 3 Madd. 1; affirmed (1822), Jac. 466; *Whitworth* v. *Whyddon* (1850), 2 Mac. & G. 52, 55; *Hervey* v. *Fitzpatrick* (1854), Kay, 421 (where there was danger of the assets of an intestate being taken out of the jurisdiction).

(*i*) *Jones* v. *Jones* (1817), 3 Mer. 161; *Greville* v. *Fleming* (1845), 2

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as a rule, sufficient interest in the business carried on by his tenant to justify the appointment of a receiver over it, but, in the case of licensed premises, it may be necessary for the preservation of the premises as licensed premises to appoint a receiver of the licences with liberty to carry on the business so far as may be necessary to preserve them from forfeiture (*k*). Where a receiver of mining property is claimed on the ground of partnership, the applicant must show that the alleged partnership holds something more than a mere licence to work the mines (*l*).

SUB-SECT. 3.—*Administration of Estates.*

Application in the Probate, Divorce, and Admiralty Division.

654. When proceedings are pending in the Probate, Divorce, and Admiralty Division of the High Court to determine who is entitled to administer the estate of a deceased person, applications for a receiver, if made at all, should be made to that Division, and are not, in the absence of special circumstances, entertained elsewhere (*m*). If no probate proceedings are pending, however, a receiver may still be appointed in a creditor's administration action in the Chancery Division (*n*) if the appointment is claimed by the writ (*o*).

Jurisdiction in Chancery and Probate.

When once an administrator or receiver *pendente lite* has been appointed in probate proceedings, the Chancery court will no longer entertain an application for a receiver (*p*), but the converse proposi-

Jo. & Lat. 335; see *Price* v. *Williams* (1806), Coop. G. 31 (where a receiver was refused in an infant's administration action, the testator having directed the rents and profits of his estates to be applied in discharge of mortgages of large amount); *Arthurs, Minors*, v. *Arthur* (1824), 1 Hog. 95; *Lancashire* v. *Lancashire* (1845), 9 Beav. 120; *Fetherstone* v. *Mitchell* (1846), 9 I. Eq. R. 480; *Topping* v. *Searson* (1862), 6 L. T. 449; *Richards* v. *Goold* (1827), 1 Mol. 22.

(*k*) *Charrington & Co., Ltd.* v. *Camp*, [1902] 1 Ch. 386; *Whitbread & Co.* v. *Grain* (1907), 23 T. L. R. 462; *Leney & Sons, Ltd.* v. *Callingham and Thompson*, [1908] 1 K. B. 79, C. A.

(*l*) *Norway* v. *Rowe* (1812), 19 Ves. 144, 158; and see title MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 512, 513, 567.

(*m*) *Barr* v. *Barr*, [1876] W. N. 44; *Re Wright, Morrison* v. *Jones* (1888), 32 Sol. Jo. 721 (where a receiver was appointed by the vacation judge in an urgent case); *In the Goods of Evans (Timothy)* (1890), 15 P. D. 215 (where the probate proceedings had been unduly delayed and notice of trial withdrawn); and see *Re Ivory, Hankin* v. *Turner* (1878), 10 Ch. D. 372, C. A.; *Re Green, Green* v. *Knight*, [1895] W. N. 69; title EXECUTORS AND ADMINISTRATORS, Vol. XIV., pp. 201, 202; and p. 424, *post*. Formerly the Court of Chancery frequently appointed receivers in such cases (*Watkins* v. *Brent* (1835), 1 My. & Cr. 97; *Rendall* v. *Rendall* (1841), 1 Hare, 152; *Bellew* v. *Bellew* (1865), 4 Sw. & Tr. 58, 62; *Re Lloyd, Allen* v. *Lloyd* (1879), 12 Ch. D. 447, C. A.); though less frequently after the passing of the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 70 (*Veret* v. *Duprez* (1868), L. R. 6 Eq. 329). A receiver might also have been appointed where probate proceedings were impending, though not actually commenced (*Jones* v. *Jones* (1817), 3 Mer. 161; *Grimston* v. *Turner* (1870), 22 L. T. 292).

(*n*) *Re Baker, deceased, Giddings* v. *Baker* (1882), 26 Sol. Jo. 682; *Re Parker, Dearing* v. *Brooks* (1885), 54 L. J. (CH.) 694; *Re Green, Green* v. *Knight, supra*; *In the Estate of Cleaver*, [1905] P. 319; and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 202.

(*o*) *Re Wenge, Walter's Non-Inflammable Cellolite, Ltd.* v. *Wenge*, [1911] W. N. 129.

(*p*) *Veret* v. *Duprez, supra*.

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tion does not hold, for the Probate court often appoints an administrator *pendente lite* after the appointment of a receiver in Chancery (*q*), but it does not appoint any other person than the Chancery receiver except for special reasons (*r*). On such an appointment being made, the Chancery court will discharge its receiver, but will retain control over him in his capacity as administrator and make such orders on him as it may think proper, for example, for payment of particular debts (*s*).

Grounds for appointment.

655. An executor will not be dispossessed on the mere ground of poverty (*t*); but the insolvency of an executor or administrator is a ground for the appointment of a receiver at the instance of either beneficiaries or creditors (*a*), and this is the case even if the insolvency occurs before the death of the testator, unless it is clearly shown that the testator was aware of the insolvency at the date of the will or deliberately refrained from altering his choice after knowledge of the circumstances. The court does not infer from the mere fact of the will not having been altered after bankruptcy that the testator intended to entrust his estate to an insolvent executor (*b*). Gross misconduct or personal disability on the part of an executor (*c*), wasting or misapplication of the assets (*d*), the retention of improper securities or other breach of duty (*e*), circumstances pointing to fraud in obtaining the execution of the will (*f*), admitted insufficiency of assets (*g*), or even the fact of

(*q*) *Tichborne* v. *Tichborne, Ex parte Norris* (1869), L. R. 1 P. & D. 730 : *In the Goods of Evans* (*Timothy*) (1890), 15 P. D. 215 ; *In the Estate of Cleaver*, [1905] P. 319.

(*r*) *Tichborne* v. *Tichborne, Ex parte Norris, supra ; In the Goods of Evans* (*Timothy*) *supra*.

(*s*) *Tichborne* v. *Tichborne, Ex parte Norris, supra*.

(*t*) *Hathornthwaite* v. *Russel* (1741), 2 Atk. 126 ; *Knight* v. *Duplessis* (1749), 1 Ves. Sen. 324 ; *Anon.* (1806), 12 Ves. 4 ; *Howard* v. *Papera* (1815), 1 Madd. 142.

(*a*) *Re Winsmore, Ex parte Ellis* (1742), 1 Atk. 101 ; *Shore* v. *Shore* (1859), 4 Drew. 501 ; *Re Johnson, Steele* v. *Cobham* (1866), 1 Ch. App. 325 ; *Re Hopkins, Dowd* v. *Hawtin* (1881), 19 Ch. D. 61, C. A. ; *Gawthorpe* v. *Gawthorpe*, [1878] W. N. 91. Similarly it was held, before the passing of the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), that if a married woman were appointed executrix, the insolvency of her husband (*Scott* v. *Becher* (1817), 4 Price, 346), or even his residence out of the jurisdiction (*Taylor* v. *Allen* (1741), 2 Atk. 213), afforded sufficient ground for the appointment of a receiver.

(*b*) *Gladdon* v. *Stoneman* (1808), 1 Madd. 143, n. ; *Langley* v. *Hawk* (1820), 5 Madd. 46 ; *Oldfield* v. *Cobbett* (1835), 4 L. J. (CH.) 271 ; *Stainton* v. *The Carron Co.* (1854), 18 Beav. 146.

(*c*) *Everett* v. *Prythergch* (1841), 12 Sim. 363, 365 ; *Brooker* v. *Brooker* (1857), 3 Sm. & G. 475, 477 ; see *Yetts* v. *Palmer* (1863), 8 L. T. 528 (where it was doubtful whether a power of sale was vested in the executor who had proved the will).

(*d*) *Middleton* v. *Dodswell* (1806), 13 Ves. 266 ; see *Andrews* v. *Powys* (1723), 2 Bro. Parl. Cas. 504 ; *Hathornthwaite* v. *Russel, supra ; Dowling* v. *Hudson* (1851), 14 Beav. 423.

(*e*) *Richards* v. *Perkins* (1838), 3 Y. & C. (EX.) 299, 307 ; *Ball* v. *Oliver* (1813), 2 Ves. & B. 96.

(*f*) *Andrews* v. *Powys, supra ; Rutherford* v. *Douglas* (1822), 1 Sim. & St. 111, n. ; *Hamilton* v. *Girdleston*, [1876] W. N. 202.

(*g*) *Chalk* v. *Raine* (1849), 18 L. J. (CH.) 472.

permanent residence abroad (*h*), may also justify the appointment of a receiver (*i*). Similar principles are applicable to the appointment of a receiver against trustees (*j*).

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SUB-SECT. 4.—*As between Co-owners.*

656. As between legal co-owners of land, the court formerly would not appoint a receiver unless by consent (*k*), or unless the applicant was prevented from exercising his legal right of entering into possession and sharing in the management (*l*). Mining property, however, formed an exception to this rule (*m*). As between equitable co-owners, "exclusive occupation" by one owner, in the sense that he refuses to pay to his co-owners their proper share of rents and profits (*n*), has always been a ground for appointing a receiver, unless security for payment is given (*o*); and a co-owner, though not entitled to a receiver of the whole of the rents, could always obtain, if necessary, a receiver of a portion of the rents in proportion to his interest (*p*). Now, pending trial of a partition action, the court has jurisdiction to appoint a receiver at the instance of one of several co-owners, whether legal or equitable, notwithstanding that the party in actual occupation is not in exclusive occupation in the above sense: but the order is not made in the absence of special circumstances, if the occupying owner is willing to pay an occupation rent (*q*). Landowners.

As between co-owners of a ship, a receiver may be appointed if the managing owner is in embarrassed circumstances (*r*) or has shown a want of good faith towards his fellows (*s*); and, as between co-owners of a newspaper, a receiver may be appointed if the owner in possession refuses to account (*t*). Shipowners. Newspaper owners.

As between partners, the court does not as a rule appoint a receiver unless the partnership has been dissolved or there has been such an Partners.

(*h*) *Westby* v. *Westby* (1847), 2 Coop. *temp.* Cott. 210; *Dickins* v. *Harris* (1866), 14 L. T. 98; see *Pitcher* v. *Helliar* (1781), 2 Dick. 580; *Smith* v. *Smith* (1853), 10 Hare, Appendix II., lxxi.

(*i*) See title EXECUTORS AND ADMINISTRATORS, Vol. XIV., pp. 140, 201, 202.

(*j*) See title TRUSTS AND TRUSTEES.

(*k*) *Ramsden* v. *Fairthrop* (1863), 1 New Rep. 389; *Smith* v. *Lyster* (1841), 4 Beav. 227.

(*l*) *Milbank* v. *Revett* (1817), 2 Mer. 405; *Spratt* v. *Ahearne* (1834), 1 Jo. Ex. Ir. 50.

(*m*) *Norway* v. *Rowe* (1812), 19 Ves. 144; *Jefferys* v. *Smith* (1820), 1 Jac. & W. 298; see *County of Gloucester Bank* v. *Rudry Merthyr Steam and House Coal Colliery Co.*, [1895] 1 Ch. 629, C. A., *per* LINDLEY, L.J., at p. 637; and see title MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 511, 512.

(*n*) See *Tyson* v. *Fairclough* (1824), 2 Sim. & St. 142.

(*o*) *Street* v. *Anderton* (1793), 4 Bro. C. C. 414; *Sandford* v. *Ballard* (1861), 30 Beav. 109; *Sandford* v. *Ballard* (No. 2) (1864), 33 Beav. 401.

(*p*) *Hargrave* v. *Hargrave* (1846), 9 Beav. 549; *Sandford* v. *Ballard*, *supra*; *Murray* v. *Cockerell*, [1866] W. N. 223.

(*q*) *Porter* v. *Lopes* (1877), 7 Ch. D. 358; see *Real and Personal Advance Co.* v. *M'Carthy and Smith* (1879), 40 L. T. 878; *Sumsion* v. *Crutwell* (1883), 31 W. R. 399; and see title PARTITION, Vol. XXI., p. 850.

(*r*) *The Ampthill* (1880), 5 P. D. 224.

(*s*) *Brenan* v. *Preston* (1852), 2 De G. M. & G. 813, C. A.

(*t*) *Kelly* v. *Hutton*, *Kelly* v. *McMurray* (1869), 20 L. T. 201, C. A.

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abuse of good faith between the partners as to render dissolution inevitable (*u*).

SUB-SECT. 5.—*In Aid of Creditors.*

Wife as creditor.

657. An order for alimony in divorce proceedings constitutes the wife a judgment creditor, and may entitle her to a receiver of her husband's interest under a settlement (*a*).

Incumbrancers.

658. An incumbrancer is entitled to a receiver if default has been made in payment of the principal (*b*), or, in the case of an equitable charge, if his interest is in arrear (*c*); and, even if no default has been made, he may have a receiver appointed if he satisfies the court that his security is in jeopardy (*d*), and this applies to the floating security constituted by a debenture as well as to specific charges (*e*).

In the case of mortgages of tolls of a public undertaking, the fact that interest is in arrear justifies the appointment of a receiver (*f*).

General creditors.

659. A plaintiff who is seeking to establish a claim as a general creditor against a defendant is not, before trial, granted a receiver of specific property of the defendant, unless the evidence is very clear in his favour and the risk of eventual injury to the defendant very small; but if the property is in no one's possession, a receiver may be appointed to preserve the property pending determination of the rights of the parties (*g*).

Special statutory jurisdiction.

660. Under the Bankruptcy Act, 1883 (*h*), before any receiving order is made, the official receiver may be appointed *interim* receiver of the debtor's property with power to take possession at once.

(*u*) *Chapman* v. *Beach* (1820), 1 Jac. & W. 594; *Smith* v. *Jeyes* (1841), 4 Beav. 503; *Baxter* v. *West* (1858), 28 L. J. (CH.) 169; and see title PARTNERSHIP, Vol. XXII., p. 77.

(*a*) *Oliver* v. *Lowther* (1880), 28 W. R. 381; and see titles EXECUTION, Vol. XIV., p. 119; HUSBAND AND WIFE, Vol. XVI., pp. 588—590.

(*b*) *Curling* v. *Townshend* (*Marquis*) (1816), 19 Ves. 628, 633; *Hopkins* v. *Worcester and Birmingham Canal Proprietors* (1868), L. R. 6 Eq. 437; *Walsh* v. *Dublin Port and Docks Board* (1881), 7 L. R. Ir. 533, 544; *Re Tewkesbury Gas Co., Tysoe* v. *The Co.*, [1911] 2 Ch. 279; affirmed, [1912] 1 Ch. 1, C. A.; and see title MORTGAGE, Vol. XXI., pp. 261—267.

(*c*) *Meaden* v. *Sealey* (1849), 6 Hare, 620; *Bissill* v. *Bradford Tramways Co., Ltd.*, [1891] W. N. 51; *Aberdeen* v. *Chitty* (1839), 3 Y. & C. (EX.) 379, 382.

(*d*) *Wildy* v. *Mid-Hants Rail. Co.* (1868), 16 W. R. 409; *McMahon* v. *North Kent Ironworks Co.*, [1891] 2 Ch. 148; *Edwards* v. *Standard Rolling Stock Syndicate*, [1893] 1 Ch. 574; *Re Victoria Steamboats, Ltd., Smith* v. *Wilkinson*, [1897] 1 Ch. 158; *Grafton* (*Duke*) v. *Taylor, Manvers* (*Earl*) v. *Taylor* (1891), 7 T. L. R. 588; *Hogan* v. *Bodkin* (1826), 1 Hog. 374; *Herbert* v. *Greene* (1854), 3 I. Ch. R. 270; *Moore* v. *Malyon* (1889), 33 Sol. Jo. 699; and see title MORTGAGE, Vol. XXI., p. 261.

(*e*) *Re London Pressed Hinge Co., Ltd., Campbell* v. *London Pressed Hinge Co., Ltd.*, [1905] 1 Ch. 576; *Norton* v. *Yates*, [1906] 1 K. B. 112, 122. As to the meaning of "jeopardy," see *Re New York Taxicab Co., Ltd., Séquin* v. *The Co.*, [1912] W. N. 249; and see title COMPANIES, Vol. V., p. 376.

(*f*) *Hopkins* v. *Worcester and Birmingham Canal Proprietors* (1868), L. R. 6 Eq. 437, 447; *Potts* v. *Warwick and Birmingham Canal Navigation Co.* (1853), Kay, 142; *De Winton* v. *Brecon Corporation* (1859), 26 Beav. 533.

(*g*) *Owen and Gutch* v. *Homan* (1853), 4 H. L. Cas. 997; *National Provincial Bank of England* v. *Thomas* (1876), 24 W. R. 1013; see *Arthurs, Minors* v. *Arthur* (1824), 1 Hog. 95; and see p. 350, *ante*.

(*h*) 46 & 47 Vict. c. 52, s. 10 (1); and see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 55.

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Under the Finance Act, 1894 (*i*), where any proceeding for the recovery of estate duty is instituted, the High Court may appoint a receiver of the property and the rents and profits thereof.

SUB-SECT. 6.—*Reasons for Refusing.*

Party in possession.

661. A strong case must be made out to dispossess a party who is interested and who has the legal title (*k*). As against a prior legal mortgagee in possession, for instance, a receiver will not be appointed unless his debt has been wholly satisfied (*l*). The legal title, however, does not protect a party in possession from the appointment of a receiver if it has been acquired subject to existing equitable interests which he has failed to respect (*m*) or with notice of a *lis pendens* (*n*).

Effect of absence of parties.

662. When the defendant in an administration action becomes bankrupt, the absence of the trustee in bankruptcy is no sufficient reason for refusing to appoint a receiver, though it may prevent the effectual prosecution of the action (*o*). When the property over which a receiver is claimed is in mortgage, it is no objection that the mortgagees are not before the court, for their rights will not be prejudiced by the order (*p*); and, generally, where all necessary parties are not before the court, it seems that a receiver may be appointed if the appointment cannot prejudice their interests (*q*). In the case, however, of a public trust, a receiver is not appointed in the absence of the Attorney-General (*r*).

(*i*) 57 & 58 Vict. c. 30, s. 8 (13); *Re Bowerman, Porter* v. *Bowerman*, [1908] 2 Ch. 340; and see title ESTATE AND OTHER DEATH DUTIES, Vol. XIII., p. 226.

(*k*) *Andrews* v. *Powys* (1723), 2 Bro. Parl. Cas. 504; *Vann* v. *Barnett* (1787), 2 Bro. C. C. 158; *Huguenin* v. *Baseley* (1806), 13 Ves. 105; *Middleton* v. *Dodswell* (1806), 13 Ves. 266; *Lloyd* v. *Passingham* (1809), 16 Ves. 59; *Smith* v. *Smith* (1836), 2 Y. & C. (EX.) 353; *Rutherford* v. *Douglas* (1822), 1 Sim. & St. 111, n.; *Campbell* v. *Campbell* (1864), 4 Macq. 711, H. L.; *Bainbrigge* v. *Baddeley* (1851), 3 Mac. & G. 413, 420; *Baird* v. *Walker* (1890), 35 Sol. Jo. 56; see *Whitworth* v. *Gaugain* (1841), Cr. & Ph. 325 (where a judgment creditor was in possession under an *elegit*, and the court refused to appoint a receiver against him at the instance of an equitable mortgagee who relied, not on any priority of title, but on charges of fraud and collusion, which he failed to substantiate).

(*l*) *Quarrell* v. *Beckford* (1807), 13 Ves. 377; *Codrington* v. *Parker* (1810), 16 Ves. 469; *Berney* v. *Sewell* (1820), 1 Jac. & W. 647; *Faulkner* v. *Daniel* (1840), 3 Hare, 204, n.; *Re Southern Rail. Co., Ex parte Robson* (1885), 17 L. R. Ir. 121, 140, C. A. In *Archdeacon* v. *Bowes* (1796), 3 Anst. 752, the possession was referable to a tenancy, and not to the right of the mortgagee; and see title MORTGAGE, Vol. XXI., pp. 261—263.

(*m*) *Pritchard* v. *Fleetwood* (1815), 1 Mer. 54.

(*n*) *Landon* v. *Morris* (1832), 5 Sim. 247, 264.

(*o*) *Re Johnson, Steele* v. *Cobham* (1866), 1 Ch. App. 325.

(*p*) *Dalmer* v. *Dashwood* (1793), 2 Cox, Eq. Cas. 378, 382; *Norway* v. *Rowe* (1812), 19 Ves. 144; *Smith* v. *Egan* (1837), Sau. & Sc. 238; *Wells* v. *Kilpin* (1874), L. R. 18 Eq. 298; *Bryant* v. *Bull, Bull* v. *Bryant* (1878), 10 Ch. D. 153.

(*q*) *Hamp* v. *Robinson* (1865), 3 De G. J. & Sm. 97, 109, C. A.; *Holmes* v. *Bell* (1840), 2 Beav. 298.

(*r*) *Skinners' Co.* v. *Irish Society* (1836), 1 My. & Cr. 162; see *Gray* v. *Chaplin* (1826), 2 Russ. 126, 147.

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663. If the applicant makes out a case for a receiver, it is no ground for refusing to make the appointment that a majority of those interested in the property do not desire it (*s*), or that a prior incumbrancer objects (*t*).

Objection of parties.

Regard paid to rights of third parties.

664. In appointing a receiver, however, the court will take care to protect the rights of persons interested in the property other than the applicant (*a*). Thus, the appointment of a receiver at the instance of beneficiaries or unsecured creditors will be made without prejudice to the right of mortgagees to take possession (*b*); an appointment at the instance of puisne incumbrancers will be made without prejudice to the rights of prior incumbrancers (*c*), an inquiry as to priorities being directed, if necessary (*d*); and, after the death of a judgment debtor, the court will not, by appointing a receiver, assist one judgment creditor to obtain a preference over others who are not parties to the proceedings (*e*); and, generally, the court does not appoint a receiver if the appointment may involve grave risk of injury to the interests of other parties (*f*).

Laches and acquiescence.

665. Laches and acquiescence on the part of the applicant may be a ground for refusing to appoint a receiver (*g*). Thus, one of several co-adventurers in a mining concern who has never interfered or asserted his title while it was being conducted at a loss, will not be allowed after many years to come forward in a time of prosperity and claim the appointment of a receiver on the ground of exclusion and mismanagement (*h*).

(*s*) *Gray* v. *Chaplin* (1826), 2 Russ. 126, 131; *Wood* v. *Hitchings* (1840), 2 Beav. 289; *Fripp* v. *Chard Rail. Co.*, *Fripp* v. *Bridgewater and Taunton Canal and Stolford Rail. and Harbour Co.* (1853), 11 Hare, 241, 259; *Palmer* v. *Wright* (1846), 10 Beav. 234; *Archdeacon* v. *Bowes* (1796), 3 Anst. 752.

(*t*) *Silver* v. *Norwich* (*Bishop*) (1816), 3 Swan. 112, n., 114, n.

(*a*) *Contract Corporation* v. *Tottenham and Hampstead Junction Rail. Co.*, [1868] W. N. 242.

(*b*) *Bryan* v. *Cormick* (1788), 1 Cox, Eq. Cas. 422; *Davis* v. *Marlborough* (*Duke*) (1819), 2 Swan. 108, 137; *Bainbrigge* v. *Bainbrigge* (1850), 20 L. J. (CH.) 139, 142; *Wells* v. *Kilpin* (1874), L. R. 18 Eq. 298; *Searle* v. *Choat* (1884), 25 Ch. D. 723, C. A.; *Walmsley* v. *Mundy* (1884), 13 Q. B. D. 807, C. A.; *Underhay* v. *Read* (1887), 20 Q. B. D. 209, 210, C. A.; *Croshaw* v. *Lyndhurst Ship Co.*, [1897] 2 Ch. 154; *Smith* v. *Egan* (1837), Sau. & Sc. 238, 244; *Salt* v. *Cooper* (1880), 16 Ch. D. 544, 545, C. A.; *Re Whiteley*, *Whiteley* v. *Learoyd* (1887), 56 L. T. 846, 848.

(*c*) *Dalmer* v. *Dashwood* (1793), 2 Cox, Eq. Cas. 378; *Berney* v. *Sewell* (1820), 1 Jac. & W. 647; *Cox* v. *Champneys* (1822), Jac. 576; *Tanfield* v. *Irvine* (1826), 2 Russ. 149; *Rhodes* v. *Mostyn* (*Lord*) (1853), 17 Jur. 1007; *Pease* v. *Fletcher* (1875), 1 Ch. D. 273; *Cummins* v. *Perkins*, [1899] 1 Ch. 16, 18, C. A.; *Re Ind, Coope & Co., Ltd.*, *Fisher* v. *The Co.*, *Knox* v. *The Co.*, *Arnold* v. *The Co.*, [1911] 2 Ch. 223, 226; see title MORTGAGE, Vol. XXI., p. 262.

(*d*) *Davis* v. *Marlborough* (*Duke*), *supra*, at pp. 137, 138; see title MORTGAGE, Vol. XXI., p. 263.

(*e*) *Re Cave*, *Mainland* v. *Cave*, [1892] W. N. 142, C. A.; see title EXECUTION, Vol. XIV., p. 121.

(*f*) *Skinners' Co.* v. *Irish Society* (1836), 1 My. & Cr. 162; *Owen and Gutch* v. *Homan* (1853), 4 H. L. Cas. 997.

(*g*) *Gray* v. *Chaplin* (1826), 2 Russ. 126, 142; *Skinners' Co.* v. *Irish Society*, *supra*.

(*h*) *Norway* v. *Rowe* (1812), 19 Ves. 144; see *Fripp* v. *Chard Rail. Co.*, *Fripp* v. *Bridgewater and Taunton Canal and Stolford Rail. and Harbour Co.*, *supra*; *Brenan* v. *Preston* (1852), 2 De G. M. & G. 813, C. A.; *Thomson* v. *Anderson* (1870), L. R. 9 Eq. 523, 533.

SECT. 3. Grounds of Appointment.

Improper purpose.

666. Though the circumstances may justify the appointment of a receiver, the appointment is not made if it is sought for an improper purpose. Thus, a partner is not allowed, by getting himself appointed receiver, to obtain powers in excess of those authorised by the articles of partnership (*i*); nor is a receiver granted for the purpose of defeating an executor's legal right of retainer (*k*), or his right of preferring one creditor to another of the same degree (*l*); nor can a debtor obtain a receiver of his own property with a view to preventing his creditors from taking possession (*m*); and the court does not grant a receiver on an interlocutory application if it can only do so by prejudging the action itself (*n*).

Nugatory effect.

667. A receiver will not be appointed if the appointment would be nugatory (*o*); but the fact that there is no person in whose name the receiver could sue to recover the property is not a sufficient ground for refusing a receiver (*p*), for the appointment at least operates as an injunction against receipt of the property by any party to the action (*q*).

SECT. 4.—*Choice of Person to be Appointed.*

SUB-SECT. 1.—*In General.*

Nomination on motion.

668. On a motion for a receiver, the court does not usually appoint a named person there and then unless by consent (*r*), or unless the applicant is the only person interested in the property (*s*), but, in cases of urgency, a named person or even the applicant himself may be appointed to act at once as *interim* receiver, the applicant undertaking to abide by the order of the court and, if necessary, to be

(*i*) *Niemann* v. *Niemann* (1889), 43 Ch. D. 198, C. A.

(*k*) *Re Wells, Molony* v. *Brooke* (1890), 45 Ch. D. 569; *Baird* v. *Walker* (1890), 35 Sol. Jo. 56.

(*l*) *Philips* v. *Jones* (1884), 28 Sol. Jo. 360, C. A., disapproving *dictum* of JESSEL, M.R., in *Re Radcliffe, deceased, European Assurance Society* v. *Radcliffe* (1878), 7 Ch. D. 733; *Harris* v. *Harris* (1887), 35 W. R. 710; *Re Stevens, Cooke* v. *Stevens*, [1898] 1 Ch. 162, 173, C. A.; see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 255.

(*m*) *Piers* v. *Latouche* (1825), 1 Hog. 310.

(*n*) *Skinners' Co.* v. *Irish Society* (1836), 1 My. & Cr. 162; *Baxter* v. *West* (1858), 28 L. J. (CH.) 169; *Tucker* v. *Prior* (1887), 31 Sol. Jo. 784.

(*o*) *Mercantile Investment and General Trust Co.* v. *River Plate Trust Loan and Agency Co.*, [1892] 2 Ch. 303; *Edwards & Co.* v. *Picard*, [1909] 2 K. B. 903, C. A.; see *Whitworth* v. *Whyddon* (1850), 2 Mac. & G. 52; *Re Knott End Railway Act*, 1898, [1901] 2 Ch. 8, C. A.; *Harper* v. *McIntyre* (1907), 51 Sol. Jo. 701.

(*p*) *Wood* v. *Hitchings* (1840), 2 Beav. 289; *Acheson* v. *Hodges* (1841), 3 I. Eq. R. 516; *Kirk* v. *Houston* (1843), 5 I. Eq. R. 498.

(*q*) See p. 377, *post*.

(*r*) *Wilson* v. *Greenwood* (1818), 1 Swan. 471, 483; *Plews* v. *Baker* (1873), L. R. 16 Eq. 564, 573; *Re Llewellyn, Lane* v. *Lane* (1883), 25 Ch. D. 66, 68; *Tillett* v. *Nixon* (1883), 25 Ch. D. 238, 240; *Re Golding* (1888), 21 L. R. Ir. 194; *Re Prytherch, Prytherch* v. *Williams* (1889), 42 Ch. D. 590, 601; *Makins* v. *Ibotson (Percy) & Sons*, [1891] 1 Ch. 133; see *Budgett* v. *Improved Patent Forced Draught Furnace Syndicate, Ltd.*, [1901] W. N. 23.

(*s*) *Bagot* v. *Bagot* (1838), 2 Jur. 1063; *Hoffman* v. *Duncan* (1853), 18 Jur. 69; *Boyle* v. *Bettws Llantwit Colliery Co.* (1876), 2 Ch. D. 726.

SECT. 4. **Choice of Person to be Appointed.**

answerable in damages (*t*), and a judgment creditor is often so appointed (*a*).

Reference to master.

669. In ordinary cases the appointment is referred to chambers, where it is the duty of the master to select, from among the various persons nominated by the parties interested, the person whom he considers in all the circumstances of the case best fitted to fill the post (*b*). In practice, the person nominated by the party having the carriage of the order is usually appointed, unless he is objected to and some other person shown to be better qualified (*c*), but special directions are sometimes given to the master that preference should be shown or should not be shown to the nominee of a particular party (*d*).

Functions of court or Court of Appeal.

670. The court does not interfere with the discretion of the master in making the appointment unless the person he has selected is shown to be unfit (*e*) or some question of principle is involved (*f*), and any objection to the master's appointment should be made promptly (*g*). The mere allegation that someone else is better fitted for the post does not justify interference (*h*). The Court of Appeal is guided by similar considerations when asked to review an appointment by the judge (*i*).

Personal disqualification.

671. An infant cannot be appointed a receiver (*k*). A peer of the realm has been said to be ineligible, because the ordinary remedies against a receiver, such as that of committal, are not available against him (*l*), and a beneficed clergyman is under a statutory disability

(*t*) *Rawson* v. *Rawson* (1865), 11 L. T. 595; *Blackett* v. *Blackett* (1871), 24 L. T. 276; *Taylor* v. *Eckersley* (1876), 2 Ch. D. 302, C. A.; *Hyde* v. *Warden* (1876), 1 Ex. D. 309, C. A.; *Brenan* v. *Preston* (1852), 2 De G. M. & G. 813, C. A.; *Truman & Co.* v. *Redgrave* (1881), 18 Ch. D. 547; and see p. 375, *post*.

(*a*) *Fuggle* v. *Bland* (1883), 11 Q. B. D. 711; *M'Garry* v. *White* (1885), 16 L. R. Ir. 322; *Cummins* v. *Perkins*, [1899] 1 Ch. 16, 18, C. A.; and see title EXECUTION, Vol. XIV., p. 124; p. 364, *post*.

(*b*) *Lespinasse* v. *Bell* (1821), 2 Jac. & W. 436; *Wood* v. *Hitchings* (1840), 4 Jur. 858; *Griffin* v. *Bishop's Castle Rail. Co.* (1867), 15 W. R. 1058. Whether a conditional appointment can be made, *e.g.*, to take effect only in the event of the death of an existing receiver, is uncertain; see *Forbes* v. *Hammond* (1819), 1 Jac. & W. 88.

(*c*) *Wilson* v. *Poe* (1825), 1 Hog. 322; *Gibbs* v. *David* (1875), L. R. 20 Eq. 373.

(*d*) *Dillon* v. *Mount-Cashell* (*Lady*) (1727), 4 Bro. Parl. Cas. 306, 312; *Cockburn* v. *Raphael* (1825), 2 Sim. & St. 453; *Baylies* v. *Baylies* (1844), 1 Coll. 537, 548; *Norton* v. *Gover*, [1877] W. N. 206; see *The Ampthill* (1880), 5 P. D. 224.

(*e*) *Creuzé* v. *London* (*Bishop*) (1787), 2 Bro. C. C. 253; *Thomas* v. *Dawkin* (1792), 1 Ves. 452; *Tharpe* v. *Tharpe* (1806), 12 Ves. 317; *A.-G.* v. *Day* (1817), 2 Madd. 246, 252; *Re Bangor* (*Lord*), *a Lunatic* (1818), 2 Mol. 518.

(*f*) *Perry* v. *Oriental Hotels Co.* (1870), 5 Ch. App. 420; and see p. 362, *post*.

(*g*) *Chaytor* v. *Maclean* (1848), 11 L. T. (o. s.) 2.

(*h*) *Bowersbank* v. *Colasseau* (1796), 3 Ves. 164; *Anon.* (1797), 3 Ves. 515; *A.-G.* v. *Day*, *supra*.

(*i*) *Cookes* v. *Cookes* (1865), 2 De G. J. & Sm. 526, C. A.; *Nothard* v. *Proctor* (1875), 1 Ch. D. 4, 8, C. A.; *Lupton* v. *Stephenson* (1848), 11 I. Eq. R. 484.

(*k*) See title INFANTS AND CHILDREN, Vol. XVII., p. 47.

(*l*) *A.-G.* v. *Gee* (1813), 2 Ves. & B. 208; but, *semble*, privilege against arrest can only be asserted in punitive proceedings, not against an order

SECT. 4. Choice of Person to be Appointed.

in Ireland (*m*), and, *semble*, also in England (*n*), unless he acts without remuneration (*o*). It is also an objection that the person proposed has given security to the Crown which might result in all his property being swept away by prerogative process (*p*).

Qualification.

In the ordinary case of a receivership of the rents and profits of lands, it is not a fatal objection that the person nominated has no experience of estate management (*q*), or even that he is illiterate (*r*), provided that he is in other respects well qualified.

Residence.

It is a serious objection, however, if he lives at a great distance from the estate (*s*), or if his own daily affairs leave no time for personal attention to the duties of the office. Thus, a barrister practising in London who is also a member of Parliament is not *primâ facie* a suitable receiver for a north country estate, though these objections may be outweighed by his position in the family and special confidence reposed in him by the testator (*a*); but neither a practising barrister nor a member of Parliament is disqualified as such (*b*).

Foreign property.

672. In the case of foreign property, a person resident in the foreign country may be appointed receiver, or an English receiver may be appointed and authorised to employ an agent abroad (*c*).

Joint receivers.

673. Two or more persons may be appointed joint receivers where conflicting interests or other circumstances render it desirable (*d*).

for committal made merely to compel obedience to an order of the court; see 1 Bl. Com. 165; May, Parliamentary Practice, 11th ed., pp. 115 *et seq.*; *Aylesford* (*Earl*) v. *Poulett* (*Earl*), [1892] 2 Ch. 60; and see titles PARLIAMENT, Vol. XXI., pp. 779, 780; PEERAGES AND DIGNITIES, Vol. XXII., p. 271.

(*m*) Stat. (1824) 5 Geo. 4, c. 91, s. 2; *Mayne* v. *Mayne* (1825), 2 Mol. 362; and see note (*g*), p. 418, *post*.

(*n*) See Pluralities Act, 1838 (1 & 2 Vict. c. 106), s. 29; title ECCLESIASTICAL LAW, Vol. XI., pp. 557, 558.

(*o*) *Gardner* v. *Blane* (1842), 1 Hare, 381.

(*p*) *A.-G.* v. *Day* (1817), 2 Madd. 246, 254 (receiver-general of a county).

(*q*) *Wilkins* v. *Williams* (1798), 3 Ves. 588; *Garland* v. *Garland* (1793), 2 Ves. 137: *Bagot* v. *Bagot* (1841), 10 L. J. (CH.) 116, 120.

(*r*) *Chaytor* v. *Maclean* (1848), 11 L. T. (O. S.) 2.

(*s*) *Re Errington, Ex parte Fermor* (1821), Jac. 404. With the means of communication that now exist this objection is of less weight than formerly; see, for instance, *Re Carshalton Park Estate, Ltd., Graham* v. *The Co., Turnell* v. *The Co.*, [1908] 2 Ch. 62, 68.

(*a*) *Wynne* v. *Newborough* (*Lord*) (1808), 15 Ves. 283.

(*b*) *Garland* v. *Garland, supra*; *Wynne* v. *Newborough* (*Lord*), *supra*; *Wilkins* v. *Williams, supra*; *Re Errington, Ex parte Fermor, supra*. A member of Parliament, however, if appointed receiver, cannot be committed for contempt of court unless the proceedings are of a punitive character (*Re Gent, Gent-Davis* v. *Harris* (1888), 40 Ch. D. 190).

(*c*) —— v. *Lindsey* (1808), 15 Ves. 91; *Cockburn* v. *Raphael* (1825), 2 Sim. & St. 453; *Codrington* v. *Johnstone* (1838), 1 Beav. 520; *Hinton* v. *Galli* (1854), 24 L. J. (CH.) 121; *Bolton* v. *Curre* (1894), 70 L. T. 759; *Re Huinac Copper Mines, Ltd., Matheson & Co.* v. *The Co.*, [1910] W. N. 218; see 1 Seton, Judgments and Orders, 7th ed., pp. 776 *et seq.*

(*d*) *Scott* v. *Platel* (1847), 2 Ph. 229; *Ramsden* v. *Fairthrop* (1862), 1 New Rep. 389; *Gardner* v. *London, Chatham and Dover Rail. Co.* (No. 1), *Drawbridge* v. *Same*, *Gardner* v. *Same* (No. 2), *Imperial Mercantile Credit Association* v. *Same* (1867), 2 Ch. App. 201, 223; *Blackett* v. *Blackett* (1871), 24 L. T. 276; *Trade Auxiliary Co.* v. *Vickers* (1873), L. R. 16 Eq. 303; *Hills* v. *Reeves* (1882), 31 W. R. 209; *Re Parker and Parker, Ex*

SECT. 4. SUB-SECT. 2.—*Interested Party.*

Choice of Person to be Appointed.

General principle as to parties and persons connected with them.

674. As a matter of principle, a person ought not to be appointed who has shown a partiality for one of the parties (*e*), or who proposes to act under the direction and control of one of the parties (*f*), or whose interests may conflict with his duties (*g*), though it may sometimes be desirable on grounds of convenience to retain the services of someone already employed by a party interested (*h*). A party to the action should not be appointed unless by consent (*i*), or unless there are special circumstances justifying his appointment in preference to others (*k*); indeed, a party to the action cannot propose himself without the leave of the court (*l*), and such leave when given does no more than remove the disability under which he would otherwise have rested (*m*).

Persons who would otherwise control receiver.

675. A person whose duty it would otherwise be to check the accounts of the receiver and control his actions should not be appointed, unless there are very special circumstances rendering his appointment desirable (*n*). Thus, the next friend of an infant plaintiff will not be appointed, even though no objection is raised by the other parties to the action (*o*); nor should a son of the next friend be appointed (*p*); and, *semble*, a master of the Supreme Court is not fitted for the post, inasmuch as his accounts would come under the review of one of his colleagues (*q*). For the same reason, it is not desirable that the master should himself nominate the receiver, though it may be that in a matter of public concern

parte Official Receiver (1884), 1 Morr. 39; *Strapp* v. *Bull, Sons & Co.*, *Shaw* v. *London School Board*, [1895] 2 Ch. 1, 2, C. A.; *Milward* v. *Avill and Smart, Ltd.*, [1897] W. N. 162; *Duder* v. *Amsterdamsch Trustees Kantoor*, [1902] 2 Ch. 132.

(*e*) *Blakeway* v. *Blakeway* (1833), 2 L. J. (CH.) 75; *Wright* v. *Vernon* (1855), 3 Drew. 112, 120; *Young* v. *Buckett* (1882), 46 L. T. 266; *Re House Improvement Association, Ltd., Giles* v. *Nuttall* (1885), 78 L. T. Jo. 130, 352, C. A.

(*f*) *Davis* v. *Marlborough* (*Duke*) (1819), 2 Swan. 108, 118; *Lupton* v. *Stephenson* (1848), 11 I. Eq. R. 484.

(*g*) *Fripp* v. *Chard Rail. Co., Fripp* v. *Bridgewater and Taunton Canal and Stolford Rail. and Harbour Co.* (1853), 11 Hare, 241.

(*h*) *Lespinasse* v. *Bell* (1821), 2 Jac. & W. 436.

(*i*) *Downshire* (*Marchioness*) v. *Tyrrell* (1831), Hayes, 354; *Dawson* v. *Yates* (1839), 1 Beav. 301, 305; *Re Lloyd, Allen* v. *Lloyd* (1879), 12 Ch. D. 447, C. A.; *Re Prytherch, Prytherch* v. *Williams* (1889), 42 Ch. D. 590, 601; *Shorter* v. *Shorter*, [1911] P. 184. As to appointing a judgment creditor, see p. 360, *ante*, p. 364, *post*; title EXECUTION, Vol. XIV., p. 124.

(*k*) *Sargant* v. *Read* (1876), 1 Ch. D. 600; *Hoffman* v. *Duncan* (1853), 18 Jur. 69; *Turner* v. *Donegal* (*Lord*) (1845), 8 I. Eq. R. 235; *Powys* v. *Blagrave* (1854), 18 Jur. 462; *Moore* v. *O'Loghlin* (1879), 3 L. R. Ir. 405, 407; see p. 375, *post*.

(*l*) *Dawson* v. *Yates*, *supra*; *Meaden* v. *Sealey* (1849), 6 Hare, 620; *Sargant* v. *Read*, *supra*. In partnership actions, each party is generally allowed to propose himself as receiver and manager (1 Seton, Judgments and Orders, 7th ed., p. 729; *Pini* v. *Roncoroni*, [1892] 1 Ch. 633, 638).

(*m*) *Fingal* (*Earl*) v. *Blake* (1829), 2 Mol. 50; *Blakeney* v. *Dufaur* (1851), 15 Beav. 40, 43; *Banks* v. *Banks* (1850), 14 Jur. 659.

(*n*) *Ex parte Pincke* (1817), 2 Mer. 452. As to appointing a judgment creditor, see note (*i*), *supra*.

(*o*) *Stone* v. *Wishart* (1817), 2 Madd. 64.

(*p*) *Taylor* v. *Oldham* (1822), Jac. 527.

(*q*) *Ex parte Fletcher* (1801), 6 Ves. 427; *Ex parte Pincke*, *supra*.

he would be justified in doing so, if the parties interested failed to nominate within a reasonable time (*r*).

SECT. 4. Choice of Person to be Appointed.

A trustee will not be appointed, at any rate with remuneration (*s*), unless by reason of special knowledge of the property (*t*) or special confidence reposed in him by the testator (*a*) he is better fitted for the post than anyone else; but a trustee is generally allowed to propose himself, if he offers to act without salary (*b*), and the appointment of a trustee who has no active duties to perform, such as a trustee to preserve contingent remainders, is unobjectionable (*c*).

Trustees.

For similar reasons, the appointment of the solicitor having the conduct of the cause (*d*), or who is actually and substantially the solicitor for the parties interested in the estate, the ostensible solicitor acting under his control (*e*), or the appointment of a member of the firm of solicitors acting for the plaintiff (*f*), is improper; but a solicitor is not as such ineligible for the position of receiver, though he is not allowed to charge profit costs (*g*).

Solicitors.

676. In some cases, and particularly where powers of management are conferred, it may be desirable that a person with special knowledge or aptitude should be appointed (*h*), notwithstanding that he is a party interested (*i*). Thus, in partnership actions a solvent partner is generally appointed (*k*), and an executor or trustee is often appointed receiver and manager of a testator's business (*l*), and, in the case of public undertakings such as railways, the chairman, manager, or some other official of the company is usually chosen (*m*).

Persons specially qualified although interested.

(*r*) *A.-G.* v. *Day* (1817), 2 Madd. 246.

(*s*) *Anon.* (1797), 3 Ves. 515; —— v. *Jolland* (1802), 8 Ves. 72; *Sykes* v. *Hastings* (1805), 11 Ves. 363; *Sutton* v. *Jones*, *Jones* v. *Sutton* (1809), 15 Ves. 584.

(*t*) *Hibbert* v. *Jenkins* (1805), cited in *Sykes* v. *Hastings*, *supra*.

(*a*) *Newport* v. *Bury* (1857), 23 Beav. 30; *Gardner* v. *Blane* (1842), 1 Hare, 381; *Morison* v. *Morison* (1838), 4 My. & Cr. 215 (consignee of West Indian Estate).

(*b*) *Banks* v. *Banks* (1850), 14 Jur. 659; *Brodie* v. *Barry* (1811), 3 Mer. 695; *Tait* v. *Jenkins* (1842), 1 Y. & C. Ch. Cas. 492.

(*c*) *Sutton* v. *Jones*, *Jones* v. *Sutton*, *supra*.

(*d*) *Garland* v. *Garland* (1793), 2 Ves. 137; see *Ex parte Pincke* (1817), 2 Mer. 452.

(*e*) *Sutton* v. *Jones*, *Jones* v. *Sutton*, *supra*.

(*f*) *Re Lloyd*, *Allen* v. *Lloyd* (1879), 12 Ch. D. 447, C. A.

(*g*) *Wilson* v. *Poe* (1825), 1 Hog. 322; see *Lupton* v. *Stephenson* (1848), 11 I. Eq. R. 484; *Della Cainea* v. *Hayward* (1825), M'Cle. & Yo. 272; *Bagot* v. *Bagot* (1841), 10 L. J. (CH.) 116, 120.

(*h*) *Lupton* v. *Stephenson* (1848), 11 I. Eq. R. 484; *Gibbs* v. *David* (1875), L. R. 20 Eq. 373.

(*i*) *Re Golding* (1888), 21 L. R. Ir. 194; *Makins* v. *Ibotson* (*Percy*) *& Sons*, [1891] 1 Ch. 133; *Acheson* v. *Hodges* (1841), 3 I. Eq. R. 516.

(*k*) *Sargant* v. *Read* (1876), 1 Ch. D. 600; *Collins* v. *Barker*, [1893] 1 Ch. 578; *Wilson* v. *Greenwood* (1818), 1 Swan. 471; *Blakeney* v. *Dufaur* (1851), 15 Beav. 40; see *Bloomer* v. *Currie* (1907), 51 Sol. Jo. 277; and see note (*l*), p. 362, *ante*.

(*l*) *Wells* v. *Wales* (1855), 4 De G. M. & G. 816.

(*m*) *Gardner* v. *London*, *Chatham and Dover Rail. Co.* (No. 1), *Drawbridge* v. *Same*, *Gardner* v. *Same* (No. 2), *Imperial Mercantile Credit Association* v. *Same* (1867), 2 Ch. App. 201, 219; *Potts* v. *Warwick and Birmingham Canal Navigation Co.* (1853), Kay, 142; *Ames* v. *Birkenhead Docks* (*Trustees*) (1855), 20 Beav. 332; see title RAILWAYS AND CANALS, Vol. XXIII., p. 766.

SECT. 4.
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So, also, when a company is in liquidation, the liquidator is generally appointed on grounds of economy and convenience (*n*), and any receiver already in possession under an order of the court is discharged (*o*); but if the liquidator of a mining company in voluntary liquidation has not the means of keeping the mine open, an incumbrancer whose security is in consequence imperilled may have a receiver appointed in spite of opposition by the company (*p*), and a liquidator will not be appointed receiver if he has assumed an attitude of hostility to the secured creditors (*q*).

SUB-SECT. 3.—*Right of Creditor to Nominate.*

Nominees who are preferred.

677. A judgment creditor or an incumbrancer is in general entitled to have his own nominee appointed receiver on satisfying the court of his fitness for the post by affidavit (*r*); but, if the value of the equity of redemption is as great as that of the mortgage debt, and the master chooses to appoint the nominee of the mortgagor, his discretion will not be interfered with on the mere ground that the mortgagee's nominee is better qualified (*s*). In the case of debentures, the nominee of trustees representing the whole body of debenture-holders is preferred to the nominee of an individual debenture-holder, even though his action is prior in point of time (*t*); and, as between several incumbrancers, the nominee of a prior incumbrancer is preferred (*u*); but, when one order for the appointment of a receiver is made on several applications of persons whose rights are in other respects equal, the carriage of the order with its resulting advantages is generally given to the person whose notice of motion was first served, even though his writ is not the earliest (*a*).

Judgment creditor or mortgagee.

678. A judgment creditor or mortgagee will not himself be appointed receiver unless he consents to act without salary (*b*).

(*n*) *Perry* v. *Oriental Hotels Co.* (1870), 5 Ch. App. 420; *Tottenham* v. *Swansea Zinc Ore Co.* (1884), 53 L. J. (CH.) 776; *Willmott* v. *London Celluloid Co.* (1885), 52 L. T. 642; *Re Pound (Henry), Son and Hutchins* (1889), 42 Ch. D. 402, 419, 423, C. A.; *Re Stubbs (Joshua), Ltd., Barney* v. *Stubbs (Joshua), Ltd.*, [1891] 1 Ch. 475, 482, C. A.; *British Linen Co.* v. *South American and Mexican Co.*, [1894] 1 Ch. 108, C. A.

(*o*) See p. 416, *post*; *secus*, as to receivers appointed out of court; see *Re Pound (Henry), Son and Hutchins, supra*; *Re Stubbs (Joshua), Ltd., Barney* v. *Stubbs (Joshua) Ltd., supra*.

(*p*) *Boyle* v. *Bettws Llantwit Colliery Co.* (1876), 2 Ch. D. 726.

(*q*) *Re House Improvement Association, Ltd., Giles* v. *Nuttall* (1885), 78 L. T. Jo. 130, 352, C. A.; and see title COMPANIES, Vol. V., p. 378.

(*r*) *Bowersbank* v. *Colasseau* (1796), 3 Ves. 164; *Wilkins* v. *Williams* (1798), 3 Ves. 588; *Anderson* v. *Kemshead* (1852), 16 Beav. 329, 344, 345.

(*s*) *Thomas* v. *Dawkin* (1792), 3 Bro. C. C. 508; 1 Ves. 452.

(*t*) *Re Parsonage (Septimus) & Co., Ltd., Arts* v. *The Co., Law Guarantee and Trust Society* v. *The Co.* (1901), 17 T. L. R. 420, C. A.

(*u*) *Bord* v. *Tollemache* (1862), 1 New Rep. 177.

(*a*) *Hart* v. *Tulk* (1849), 6 Hare, 611; see *Sargant* v. *Read* (1876), 1 Ch. D. 600.

(*b*) *Sayers* v. *Whitfield* (1829), 1 Knapp, 133, 142, P. C.; *Cummins* v. *Perkins*, [1899] 1 Ch. 16, 18, C. A.; see *Davis* v. *Barrett* (1844), 13 L. J. (CH.) 304; *Cox* v. *Champneys* (1822), Jac. 576 (consignee of West Indian estate); *Beamish* v. *Stephenson* (1886), 18 L. R. Ir. 319; see title EXECUTION, Vol. XIV., p. 124.

SECT. 5. Property in Respect of which Appointment will be Made.

SECT. 5.—*Property in Respect of which Appointment will be Made (c).*

SUB-SECT. 1.—*In General.*

679. A receiver may be appointed of the rents and profits of land, whether in possession or reversion (*d*), and of all kinds of personalty, including such diverse forms of property as a ship (*e*), a cargo of guano (*f*), furniture and chattels (*g*), a reversionary interest, whether legal or equitable (*h*), vested or contingent (*i*), a married woman's separate estate not subject to a restraint on anticipation (*k*), the rates and tolls of a public undertaking (*l*), the machinery of a ship temporarily at an engineer's for repairs (*m*), a newspaper (*n*), cabs and horses used in the business of a cab proprietor (*o*), the rents and profits derivable from the office of Master Forester of Royal Forests (*p*), the box office receipts of a theatre (*q*), impropriate

Kinds of property in respect of which order may be granted.

(*c*) See also title EXECUTION, Vol. XIV., pp. 118—122.

(*d*) *Re Jones and Judgments Act*, 1864, [1895] W. N. 123. *Semble*, where the interest is reversionary, the receiver should be appointed to receive the rents and profits receivable in respect of the reversionary interest, not of the land; see *Re Harrison and Bottomley*, [1899] 1 Ch. 465, C. A., *per* NORTH, J., at p. 467. A receiver may be appointed of a rentcharge, or of a fee farm rent (*Manly* v. *Hawkins* (1838), 1 Dr. & Wal. 363; *Stevelly* v. *Murphy* (1840), 2 I. Eq. R. 448).

(*e*) *Brenan* v. *Preston* (1852), 2 De G. M. & G. 813, C. A.; *Liverpool Marine Credit Co.* v. *Wilson* (1872), 7 Ch. App. 507, 511; *Keith* v. *Burrows* (1876), 1 C. P. D. 722, 736; *Croshaw* v. *Lyndhurst Ship Co.*, [1897] 2 Ch. 154, 155.

(*f*) *Peruvian Guano Co.* v. *Dreyfus Brothers & Co.*, [1892] A. C. 166.

(*g*) *Taylor* v. *Eckersley* (1876), 2 Ch. D. 302, C. A.; *Rawson* v. *Rawson* (1865), 11 L. T. 595; *Manchester and Liverpool District Banking Co.* v. *Parkinson* (1888), 22 Q. B. D. 173, C. A.; *Hoare (Charles) & Co.* v. *Hove Bungalows, Ltd.* (1912), 56 Sol. Jo. 686; and, as to heirlooms, see *Shaftesbury (Earl)* v. *Marlborough (Duke)* (1820), 1 Seton, Judgments and Orders, 7th ed., p. 735.

(*h*) *Fuggle* v. *Bland* (1883), 11 Q. B. D. 711; *Tyrrell* v. *Painton*, [1895] 1 Q. B. 202, 205, C. A.; *Ideal Bedding Co., Ltd.* v. *Holland*, [1907] 2 Ch. 157.

(*i*) *Macnicoll* v. *Parnell* (1887), 35 W. R. 773; *Campbell* v. *Campbell and Davis* (1895), 72 L. T. 294.

(*k*) *Re Peace and Waller* (1883), 24 Ch. D. 405, 408, C. A.; *Cummins* v. *Perkins*, [1899] 1 Ch. 16, C. A.; as to restrained property, see p. 367, *post*.

(*l*) *Fripp* v. *Chard Rail. Co.*, *Fripp* v. *Bridgewater and Taunton Canal and Stolford Rail. and Harbour Co.* (1853), 11 Hare, 241; *Potts* v. *Warwick and Birmingham Canal Navigation Co.* (1853), Kay, 142; *Ames* v. *Birkenhead Docks (Trustees)* (1855), 20 Beav. 332; *Hopkins* v. *Worcester and Birmingham Canal Proprietors* (1868), L. R. 6 Eq. 437, 447; *De Winton* v. *Brecon Corporation* (1859), 26 Beav. 533; and, as to turnpike tolls, see *Mellish* v. *Brooks* (1840), 3 Beav. 22; *Dumville* v. *Ashbrooke* (1829), 3 Russ. 98, n.; *Knapp* v. *Williams* (1798), 4 Ves. 430, n.; *Crewe (Lord)* v. *Edelston* (1857), 1 De G. & J. 93, C. A.

(*m*) *Brenan* v. *Preston* (1852), 2 De G. M. & G. 813, C. A.

(*n*) *Chaplin* v. *Young* (1862), 6 L. T. 97; *Kelly* v. *Hutton*, *Kelly* v. *McMurray* (1869), 20 L. T. 201, C. A.

(*o*) *Howell* v. *Dawson* (1884), 13 Q. B. D. 67.

(*p*) *Blanchard* v. *Cawthorne* (1831), 4 Sim. 566.

(*q*) As between part proprietors (*Const* v. *Harris* (1824), Turn. & R. 496, 517), but not by way of equitable execution (*Cadogan* v. *Lyric Theatre, Ltd.*, [1894] 3 Ch. 338, C. A.).

SECT. 5. **Property in Respect of which Appointment will be Made.**

tithes (*r*), the emoluments of a college fellowship (*s*), prize money (*t*), dividends on stocks and shares (*a*), an interest under a will (*b*), or debts due to a firm or individual (*c*), and a receiver is often appointed in general terms over all the property and assets comprised in a charge (*d*).

Extension of receivership order.

Debenture-holders who have obtained such an order may, on obtaining judgment for the amount of their debt, have the receivership extended to any property of the company not included in the order, so as to prevent other judgment creditors from seizing assets not covered by the debentures (*e*).

Interest must be a right of property.

680. The interest affected must, however, be a genuine right of property. A receiver will not be appointed, for instance, of a purely voluntary allowance (*f*), or of rates for paving and lighting expenses to be fixed by a future assessment and collected at a future time, where the commissioners or corporation concerned can take nothing for themselves, but are obliged to apply the proceeds as directed by statute (*g*).

Appointment must be effective and protective.

Nor will the appointment be made if it is likely to prove ineffective (*h*) or destructive of the property to which it relates (*i*). A receiver will not be appointed, for instance, of an interest under a will which would be forfeited by the very fact of the appointment (*k*).

Future earnings.

681. A receiver will not be appointed of the future earnings of a debtor, unless he has himself assigned or charged them (*l*).

(*r*) *Drever* v. *Maudesley* (1844), 8 Jur. 547; *Callaghan* v. *Reardon* (1837), Sau. & Sc. 682.

(*s*) *Feistel* v. *King's College, Cambridge* (1847), 10 Beav. 491.

(*t*) *Alexander* v. *Wellington* (*Duke*) (1831), 2 Russ. & M. 35.

(*a*) As to the practice with regard to these, see *Re Browne*, [1894] 3 Ch. 412, 417, C. A.; *Re Auchmuty* (1908), 99 L. T. 462, C. A.; *Re Spurling*, [1909] 1 Ch. 199, C. A.

(*b*) *Cummins* v. *Perkins*, [1899] 1 Ch. 16, C. A.

(*c*) *Wigram* v. *Buckley*, [1894] 3 Ch. 483, C. A.; *Rutter* v. *Everett*, [1895] 2 Ch. 872; *Candler* v. *Candler* (1821), Madd. & G. 141.

(*d*) *Re Maudslay, Sons and Field, Maudslay* v. *Maudslay, Sons and Field*, [1900] 1 Ch. 602. But it is not the practice of the court at the instance of a judgment creditor to appoint a receiver of the debtor's property generally (*Hamilton* v. *Brogden*, [1891] W. N. 14).

(*e*) *Hope* v. *Croydon and Norwood Tramways Co.* (1887), 34 Ch. D. 730.

(*f*) *R.* v. *Lincolnshire County Court Judge* (1887), 20 Q. B. D. 167 (income of property held on discretionary trusts for the benefit of a debtor). As to gratuities to public servants, see the text, *infra*.

(*g*) *Drewry* v. *Barnes* (1826), 3 Russ. 94; see *Preston* v. *Great Yarmouth Corporation* (1872), 7 Ch. App. 655.

(*h*) *Mercantile Investment and General Trust Co.* v. *River Plate Trust, Loan and Agency Co.*, [1892] 2 Ch. 303; *Edwards & Co.* v. *Picard*, [1909] 2 K. B. 903, C. A.; *Re Knott End Railway Act*, 1898, [1901] 2 Ch. 8, C. A.; see *Hinton* v. *Galli* (1854), 24 L. J. (CH.) 121.

(*i*) *Cooper* v. *Reilly* (1830), 1 Russ. & M. 560 (salary of assistant parliamentary counsel to the Treasury (see note (*i*), p. 368, *post*)); *Hamilton* v. *Brogden*, [1891] W. N. 36 (future director's fees).

(*k*) See *Campbell* v. *Campbell and Davis* (1895), 72 L. T. 294. As to the construction and effect of forfeiture clauses, see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 148 *et seq.*

(*l*) *Hamilton* v. *Brogden*, *supra*; *Holmes* v. *Millage*, [1893] 1 Q. B. 551, 555, C. A.; *Cadogan* v. *Lyric Theatre, Ltd.*, [1894] 3 Ch. 338, C. A.; *Edwards & Co.* v. *Picard*, *supra*.

SECT. 5.
Property in Respect of which Appointment will be Made.

Personal benefits with statutory protection.

682. A receiver cannot be appointed of permanent alimony granted under the provisions of the Matrimonial Causes Acts, 1857 (*m*) and 1866 (*n*), or of the Summary Jurisdiction (Married Women) Act, 1895 (*o*), for such allowances are intended for the personal benefit of the grantee and are therefore inalienable; and a gratuity granted to a public servant who retires on account of ill-health under the age of sixty (*p*) is in the nature of a compassionate allowance intended for his personal benefit and cannot be taken in execution before it has been paid to him (*q*). Weekly payments by way of compensation under the Workmen's Compensation Act, 1906 (*r*), are by statute inalienable (*s*).

Property restrained from anticipation.

683. When property of a married woman is subject to a restraint on anticipation a receiver can only be appointed of income that has already accrued due (*t*).

Railway undertaking.

684. A receiver may be appointed over the undertaking of a railway company under the Railway Companies Act, 1867 (*a*), even though the railway is not open for traffic, provided there is anything for him to receive (*b*); but if the company has acquired no land and constructed no railway, there is no undertaking of which a receiver can be appointed (*c*). A receiver so appointed has no right to receive unpaid capital (*d*).

Property abroad.

685. A receiver may be appointed of property abroad, notwithstanding that the court is unable to enforce delivery of possession (*e*).

(*m*) 20 & 21 Vict. c. 85, s. 32.

(*n*) 29 & 30 Vict. c. 32, s. 1; see *Re Robinson* (1884), 27 Ch. D. 160, C. A.; *Watkins* v. *Watkins*, [1896] P. 222, C. A.; *Victor* v. *Victor*, [1912] 1 K. B. 247, 253, C. A.; and see title HUSBAND AND WIFE, Vol. XVI., pp. 564, 568.

(*o*) 58 & 59 Vict. c. 39, s. 5; see *Paquine* v. *Snary*, [1909] 1 K. B. 688, C. A.; and see title HUSBAND AND WIFE, Vol. XVI., p. 599.

(*p*) Superannuation Act, 1859 (22 Vict. c. 26), s. 6.

(*q*) *Timothy* v. *Day*, [1908] 2 I. R. 26, C. A.; see *Re Wicks, Ex parte Wicks* (1881), 17 Ch. D. 70, C. A.; *Re Webber, Ex parte Webber* (1886), 18 Q. B. D. 111.

(*r*) 6 Edw. 7, c. 58.

(*s*) *Ibid.*, Sched. I. (19); and see title MASTER AND SERVANT, Vol. XX., p. 208.

(*t*) *Harnett* v. *Macdougall* (1845), 8 Beav. 187; *Fitzgibbon* v. *Blake* (1852), 3 I. Ch. R. 328. As to appointing a receiver to enforce payment of costs of proceedings instituted by a married woman, see title HUSBAND AND WIFE, Vol. XVI., p. 374. As to the general effect of such restraint, see *ibid.*, pp. 359 *et seq.* As to appointing a receiver by way of equitable execution against separate property of a married woman, see *ibid.*, pp. 369, 457.

(*a*) 30 & 31 Vict. c. 127, s. 4.

(*b*) *Re Knott End Railway Act*, 1898, [1901] 2 Ch. 8, C. A.; and see title RAILWAYS AND CANALS, Vol. XXIII., pp. 765, 766.

(*c*) *Re Birmingham and Lichfield Junction Rail. Co.* (1881), 18 Ch. D. 155.

(*d*) *Re Birmingham and Lichfield Junction Rail. Co., supra; Re West Lancashire Rail. Co.* (1890), 63 L. T. 56.

(*e*) *Cockburn* v. *Raphael* (1825), 2 Sim. & St. 453; *Houlditch* v. *Donegal (Marquis)* (1834), 8 Bli. (N. S.) 301, 343; *Codrington* v. *Johnstone* (1838), 1 Beav. 520; *Keys* v. *Keys* (1839), 1 Beav. 425; *Smith* v. *Smith* (1853), 10 Hare, Appendix II., lxxi.; *Hinton* v. *Galli* (1854), 24 L. J. (CH.) 121;

Property in Respect of which Appointment will be Made.

686. A receiver cannot be appointed of property which, either by express statutory enactment or on grounds of public policy, is incapable of assignment. Thus, the full pay of naval and military officers of the Crown (*f*) and the salaries of judges (*g*) and of all public officers (*h*) paid out of national funds are inalienable on grounds of public policy (*i*).

Salaries of public officers.

Half-pay and allowances.

On grounds of public policy also a receiver cannot be appointed of the half-pay of a military officer, the object of which is to enable him to maintain his social position, so that his services may again be available when required (*k*), nor of an allowance of a similar nature made to a public civil officer for maintenance pending his re-engagement (*l*).

Public pensions.

With regard to public pensions, the general rule is that if awarded exclusively for past services and not made inalienable by

Bolton v. *Curre* (1894), 70 L. T. 759; *Re Maudslay, Sons and Field, Maudslay* v. *Maudslay, Sons and Field,* [1900] 1 Ch. 602; *Duder* v. *Amsterdamsch Trustees Kantoor,* [1902] 2 Ch. 132; *Re Huinac Copper Mines, Ltd., Matheson & Co.* v. *The Co.,* [1910] W. N. 218. As to foreign immovables generally, see title CONFLICT OF LAWS, Vol. VI., pp. 207 *et seq.*

(*f*) *Apthorpe* v. *Apthorpe* (1887), 12 P. D. 192, C. A.

(*g*) See *Flarty* v. *Odlum* (1790), 3 Term Rep. 681, 682; *Davis* v. *Marlborough* (*Duke*) (1818), 1 Swan. 74, 79, 81.

(*h*) In *Palmer* v. *Vaughan* (1818), 3 Swan. 173, it had been doubted whether a clerk of the peace was a "public officer" within the meaning of this rule, and a receiver was appointed only for the purpose of securing the profits of the office pending a decision; but see note (*i*), *infra.* The clerk to the deputy registrar of the Prerogative Court of Canterbury was held not to be a "public officer" (*Aston* v. *Gwinnell* (1829), 3 Y. & J. 136). The schoolmaster of an Irish national school is a "public officer" within the meaning of this rule (*Picton* v. *Cullen,* [1900] 2 I. R. 612, C. A.), and so is the clerk to petty sessions in Ireland whose salary is paid not solely out of local funds, but in part out of the proceeds of fines at petty sessions (*M'Creery* v. *Bennett,* [1904] 2 I. R. 69). A fellowship at the universities is not a "public office" for this purpose (*Feistel* v. *King's College, Cambridge* (1847), 10 Beav. 491); in the earlier case of *Berkeley* v. *King's College, Cambridge* (1830), 10 Beav. 602, a receiver was refused on interlocutory motion apparently because the nature of the emoluments attaching to the office was not disclosed; see *Feistel* v. *King's College, Cambridge, supra,* at p. 499.

(*i*) *Arbuckle* v. *Cowtan* (1803), 3 Bos. & P. 321, 328; *Palmer* v. *Bate* (1821), 2 Brod. & Bing. 673 (clerk of the peace); *Re Mirams,* [1891] 1 Q. B. 594, 596. In *Cooper* v. *Reilly* (1830), 2 Sim. 560; affirmed 1 Russ. & M. 560, it was held in the court of first instance that the salary of assistant parliamentary counsel to the Treasury was incapable of assignment, but this was doubted in *Grenfell* v. *Windsor* (*Dean and Canons*) (1840), 2 Beav. 544; and the refusal to appoint a receiver may be supported on other grounds, namely, that the appointment would have resulted in the salary being stopped, and would therefore have been nugatory. As to the sale of public offices or of salaries or pensions incidental thereto, see titles CHOSES IN ACTION, Vol. IV., pp. 400—402; CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 486; EXECUTION, Vol. XIV., pp. 94, 95, 121, 122; PUBLIC AUTHORITIES AND PUBLIC OFFICERS, Vol. XXIII., pp. 350, 352; and see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 190, 191.

(*k*) *Stone* v. *Lidderdale* (1795), 2 Anst. 533, following *Flarty* v. *Odlum* (1790), 3 Term Rep. 681; *Lidderdale* v. *Montrose* (*Duke*) (1791), 4 Term Rep. 248; *Barwick* v. *Reade* (1791), 1 Hy. Bl. 627; and see *McCarthy* v. *Goold* (1810), 1 Ball & B. 387, 389.

(*l*) *Wells* v. *Foster* (1841), 8 M. & W. 149.

SECT. 5. Property in Respect of which Appointment will be Made.

statute, they are capable of assignment, but, if awarded either wholly or partly in consideration of some continuing duty or service, they cannot be assigned (*m*). Pensions awarded to public servants under the age of sixty, to which a statutory liability is attached to re-enter the public service if called upon, are therefore incapable of assignment and cannot be taken in execution (*n*).

Naval and military pensions are by statute inalienable (*o*), but certain sums arising from the commutation of military pensions (*p*) may be the subject of a receivership order (*q*).

Naval and military pensions.

Pensions and superannuation allowances granted to police constables, poor law officers, and asylum officers are by statute inalienable (*a*), but not so pensions of the Royal Irish Constabulary, which, therefore, being awarded solely for past services, may be the subject of a receivership order (*b*). In Ireland, superannuation allowances granted to corporate and other local public officers are by statute incapable of assignment (*c*).

Pensions of local public officers.

A receiver may be appointed of a Civil Service pension (*d*), of a pension awarded as compensation for the abolition of a public office (*e*), of the retiring pension of a county court judge or of a judge of a Crown colony (*f*), and of the pensions of military officers not in the service of the Crown (*g*); but not of a pension granted as a perpetual memorial of national gratitude for public services (*h*), or, *semble*, of

Civil Service and other pensions.

(*m*) *Davis* v. *Marlborough* (*Duke*) (1818), 1 Swan. 74, 79; *Wells* v. *Foster* (1841), 8 M. & W. 149, 152.

(*n*) Superannuation Act, 1859 (22 Vict. c. 26), s. 11; *Waldron* v. *Croghan* (1881), 7 L. R. Ir. 320; *MacDonald* v. *O'Toole*, [1908] 2 I. R. 386.

(*o*) Naval and Marine Pay and Pensions Act, 1865 (28 & 29 Vict. c. 73), ss. 4, 5; Greenwich Hospital Act, 1865 (28 & 29 Vict. c. 89), s. 8; Army Act (44 & 45 Vict. c. 58), s. 141; and see *Lloyd* v. *Cheetham* (1861), 3 Giff. 171, overruling *Knight* v. *Bulkeley* (1859), 5 Jur. (N. S.) 817; *Birch* v. *Birch* (1883), 8 P. D. 163; *Lucas* v. *Harris* (1886), 18 Q. B. D. 127, C. A., distinguishing *Dent* v. *Dent* (1867), L. R. 1 P. & D. 366; *Crowe* v. *Price* (1889), 22 Q. B. D. 429, C. A.; *Jones & Co.* v. *Coventry*, [1909] 2 K. B. 1029; and see title ROYAL FORCES.

(*p*) *I.e.*, sums arising under the Pensions Commutation Act, 1871 (34 & 35 Vict. c. 36), which are not within the Army Act (44 & 45 Vict. c. 58), s. 141; see note (*o*), *supra*.

(*q*) *Crowe* v. *Price*, *supra*.

(*a*) Police Act, 1890 (53 & 54 Vict. c. 45), s. 7; Police (Scotland) Act, 1890 (53 & 54 Vict. c. 67), s. 7; Poor Law Officers' Superannuation Act, 1896 (59 & 60 Vict. c. 50), s. 10; Asylums Officers' Superannuation Act, 1909 (9 Edw. 7, c. 48), s. 12; and see titles LUNATICS AND PERSONS OF UNSOUND MIND, Vol. XIX., p. 483, note (*f*); POLICE, Vol. XXII., pp. 512, 513; POOR LAW, Vol. XXII., p. 547. As to prison officers, see title PRISONS, Vol. XXIII., p. 241.

(*b*) *Murphy* v. *Green* (1890), 26 L. R. Ir. 610, C. A.; *Manning* v. *Mullins*, [1898] 2 I. R. 34, C. A.

(*c*) Local Officers' Superannuation Act (Ireland) 1869, (32 & 33 Vict. c. 79), s. 7; *Brenan* v. *Morrissey* (1890), 26 L. R. Ir. 618 (retired town clerk).

(*d*) *Sansom* v. *Sansom* (1879), 4 P. D. 69; *Molony* v. *Cruise* (1892), 30 L. R. Ir. 99; and see *Knill* v. *Dumergue*, [1911] 2 Ch. 199, C. A.

(*e*) *Spooner* v. *Payne* (1849), 2 De G. & Sm. 439; affirmed (1852), 1 De G. M. & G. 383.

(*f*) *Willcock* v. *Terrell* (1878), 3 Ex. D. 323, C. A.; *Re Huggins, Ex parte Huggins* (1882), 21 Ch. D. 85, C. A.

(*g*) *Heald* v. *Hay* (1862), 3 Giff. 467; *Carew* v. *Cooper* (1863), 4 Giff. 619.

(*h*) *Davis* v. *Marlborough* (*Duke*), *supra*.

SECT. 5. Property in Respect of which Appointment will be Made.

any annuity granted by the Crown as incidental to the creation of a peerage (*i*).

687. A receiver may be appointed of the profits of an ecclesiastical office, such as a canonry or a workhouse chaplaincy (*k*), but not of a benefice with cure of souls (*l*), or of the retiring pension of an incumbent (*m*).

Ecclesiastical offices.

SUB-SECT. 3.—*Property already in the Possession of a Receiver.*

General rule.

688. The court does not as a rule appoint a receiver over property already in the possession of a receiver appointed in other proceedings (*n*), unless it is shown that those proceedings were collusive (*o*). A receiver may be so appointed at the instance of a prior incumbrancer, but he will not be allowed to act till the former receiver is removed (*p*). In some cases it may be convenient that the receiver already in possession should be appointed to act for the applicant, if he is willing to do so (*q*).

Property in hands of sequestrator.

689. A receiver may be appointed of the rents and profits of land in the occupation of a sequestrator (*r*), but the appointment does not discharge the sequestration unless the receiver is appointed expressly in place of the sequestrator over all the sequestrated property (*s*).

(*i*) *Oliver* v. *Emsonne* (1514), Dyer, 1 b, 2 a; and see *Davis* v. *Marlborough* (*Duke*) (1818), 1 Swan. 74, 82.

(*k*) *Grenfell* v. *Windsor* (*Dean and Canons*) (1840), 2 Beav. 544; and see *Re Mirams*, [1891] 1 Q. B. 594; and see title ECCLESIASTICAL LAW, Vol. XI., p. 432.

(*l*) Stat. (1571) 13 Eliz. c. 20, repealed by stat. (1803) 43 Geo. 3, c. 84, but revived by stat. (1817), 57 Geo. 3, c. 99; *Long* v. *Storie* (1849), 3 De G. & Sm. 308; *Walthew* v. *Crafts* (1851), 6 Exch. 1; *Bates* v. *Brothers* (1854), 2 Sm. & G. 509; *Hawkins* v. *Gathercole* (1855), 6 De G. M. & G. 1. In Ireland there is no such statutory restriction (*Wise* v. *Beresford* (1843), 3 Dr. & War. 276; *Lymberry* v. *Helsham* (1852), 1 I. Ch. R. 633; *Cullen* v. *Killaloe* (*Dean and Chapter*) (1852), 2 I. Ch. R. 133; *Stronge* v. *Ormsby* (1828), 2 Hog. 55); and see title ECCLESIASTICAL LAW, Vol. XI., pp. 615, 619.

(*m*) Incumbents' Resignation Act, 1871 (34 & 35 Vict. c. 44), s. 10; *Gathercole* v. *Smith* (1881), 17 Ch. D. 1, C. A.; and see title ECCLESIASTICAL LAW, Vol. XI., p. 631.

(*n*) *Valle* v. *O'Reilly* (1824), 1 Hog. 199; *Biddulph* v. *Hickman* (1825), 1 Hog. 244; *Wood* v. *Hitchings*, *Goodlake* v. *Wood* (1840), 4 Jur. 858; *Chaplin* v. *Barnett* (1911), *Times*, 20th December.

(*o*) *Nothard* v. *Proctor* (1875), 1 Ch. D. 4, C. A.; *Re Maskelyne British Typewriter, Ltd.*, *Stuart* v. *Maskelyne British Typewriter, Ltd.*, [1898] 1 Ch. 133, C. A.

(*p*) *Irving* v. *Waller* (1825), 1 Hog. 258; *Salt* v. *Cooper* (1880), 16 Ch. D. 544, 554, C. A.; *Re Connolly Brothers, Ltd.*, *Wood* v. *Connolly Brothers, Ltd.*, [1911] 1 Ch. 731, 741, 745, C. A. See *Re Metropolitan Amalgamated Estates, Ltd.*, *Fairweather* v. *The Co.* [1912] 2 Ch. 497, 502; compare *Pound* (*Henry*) *& Son* v. *Hutchins* (1889), 42 Ch. D. 402, C. A.; and see pp. 341, 353, 354, *ante*, and pp. 418, 419, 428, *post*.

(*q*) *Duder* v. *Amsterdamsch Trustees Kantoor*, [1902] 2 Ch. 132, 144 (first receiver appointed under a deed).

(*r*) *White* v. *Peterborough* (*Bishop*) (1818), 3 Swan. 109, following *Silver* v. *Norwich* (*Bishop*) (1816), 3 Swan. 112, n.; and see title ECCLESIASTICAL LAW, Vol. XI., p. 619.

(*s*) *Maynard* v. *Pomfret* (1746), 3 Atk. 468, as explained in *Shaw* v. *Wright* (1796), 3 Ves. 22; and see *Reeves* v. *Cox* (1849), 13 I. Eq. R. 247 (a case of equitable execution); and title EXECUTION, Vol. XIV., p. 89.

SECT. 6.—*Security Required.*

SECT. 6. Security Required.

SUB-SECT. 1.—*In General.*

690. Before the appointment of a receiver is completed, he must, unless the order otherwise directs, give security duly to account for his receipts and to pay the same as the court or judge shall direct (*t*). Duty of receiver.

691. In the absence of direction to the contrary, the security is by recognisance in the form No. 21 in Appendix L to the Rules of the Supreme Court (*a*). The form referred to, however, is often superseded in practice by a form of joint and several bond by the receiver and a recognised guarantee society (*b*) for payment of the actual sum to be received, if capital, or of double the gross annual value in the case of income. If the amount exceeds £2,000, the receiver must also give his personal recognisance (*c*). If a guarantee society is not employed, the security taken is usually a recognisance of the receiver himself and two sureties, and any other form of security, for instance, a mortgage on land belonging to the receiver, has been said to be improper (*d*). In some cases, where a party to the action applies for the appointment of himself as receiver, he is directed to pay a lump sum into court by way of security in lieu of the ordinary bond or recognisance (*e*). If the amount for which security is required does not exceed £500, an undertaking in the form No. 21A of Appendix L to the Rules of the Supreme Court, signed by the receiver and his sureties, is accepted as sufficient security (*f*). Form of security.

In the Chancery Division, the recognisance or bond is given to the two senior masters for the time being attached to the chambers of the judge to whom the cause or matter is assigned (*g*).

(*t*) R. S. C., Ord. 50, rr. 16, 17; *Re Hoyland Silkstone Colliery* (1883), 53 L. J. (CH.) 352. If the order authorises the receiver to take possession at once, but does not expressly direct security to be given, the possession of the receiver will be lawful and valid against a judgment creditor who subsequently levies execution, notwithstanding that security has not been given (*Morrison* v. *Skerne Ironworks Co., Ltd.* (1889), 60 L. T. 588). *Secus*, if the receiver is not empowered to act at once and his appointment is "upon first giving security" (*Defries* v. *Creed* (1865), 11 Jur. (N. S.) 360, 607; *Edwards* v. *Edwards* (1876), 2 Ch. D. 291, C. A.; *Re Rollason, Rollason* v. *Rollason* (1887), 56 L. T. 303; *Re Roundwood Colliery Co., Lee* v. *Roundwood Colliery Co.*, [1897] 1 Ch. 373, 393, C. A;; *Ridout* v. *Fowler*, [1904] 1 Ch. 658; affirmed, [1904] 2 Ch. 93, C. A.).

(*a*) R. S. C., Ord. 50, rr. 16, 17.

(*b*) See *Colmore* v. *North* (1872), 42 L. J. (CH.) 4, C. A.; *Carpenter* v. *Queen's Proctor* (1882), 7 P. D. 235; *Re Spiritine, Ltd., Owen* v. *Spiritine, Ltd.*, [1902] W. N. 124, C. A.

(*c*) See R. S. C., Appendix L, No. 21A; Yearly Practice of the Supreme Court, 1913, pp. 2098 *et seq.*

(*d*) *Mead* v. *Orrery* (*Lord*) (1745), 3 Atk. 235, 237; though in *Betagh* v. *Concannon* (1828), an Irish case, cited in Smith on Irish Receivers, p. 17, a transfer of Government stock is said to have been accepted; the case is reported on other points (1828), 2 Mol. 559; (1830), 2 Hog. 205.

(*e*) *Re Lloyd, Allen* v. *Lloyd* (1879), 12 Ch. D. 447, 448, C. A.; *Niemann* v. *Niemann* (1889), 43 Ch. D. 198, 199, C. A.

(*f*) R. S. C., Ord. 50, r. 16a (July, 1911).

(*g*) R. S. C., Ord. 60, r. 4; *Re British Power Traction and Lighting Co.*,

SECT. 6. Security Required.

A receiver's security must be given in London (*h*), except where the appointment is made in the district registries of Manchester or Liverpool (*i*).

Who may be surety.

692. A party to the action may be accepted as surety, but a solicitor having the conduct of the cause has been rejected (*k*). A partner in business of the receiver will not be accepted (*l*). Sureties must be *sui juris* and solvent, and the receiver is required from time to time to testify to their continued solvency on passing his accounts (*m*). Further, inasmuch as one of the objects of having sureties is that they may look to the conduct of the receiver and see that he performs his duties diligently, any arrangement by which they are given a control over moneys coming to the receiver's hands, as a sort of indemnity, is highly improper (*n*). Where the security required is of large amount it may be distributed among a number of sureties (*o*).

Foreign sureties.

Individual sureties must, as a rule, be resident in this country (*p*), but in the case of corporations some latitude is allowed. The bond of a Scottish guarantee company may be accepted, provided the company submits to the jurisdiction of the court (*q*), and the bond of a foreign company is admissible on the like condition if it has assets in this country and the court is satisfied as to its solvency (*r*).

Death or insolvency of surety.

If a surety goes abroad or becomes insolvent (*s*) or obtains his discharge (*t*), a substitute must be found and a fresh recognisance entered into; but in the event of death, no fresh security will be required, unless the estate of the deceased surety is insufficient to cover the liability under the recognisance (*a*).

Payment into court to reduce security.

693. In order to reduce the amount of security to be given,

Ltd., Halifax Joint Stock Banking Co., Ltd. v. *British Power Traction and Lighting Co., Ltd.*, [1910] 2 Ch. 470. For the form of security required in the King's Bench Division in cases of equitable execution, see the Central Office Regulations, Yearly Practice of the Supreme Court, 1913, pp. 716, 2098 *et seq.*; and see title EXECUTION, Vol. XIV., p. 124.

(*h*) *Re Capper, Robertson* v. *Capper* (1878), 26 W. R. 434.

(*i*) See the directions of KEKEWICH, J., Yearly Practice of the Supreme Court, 1913, p. 464.

(*k*) *Ryder* v. *Dickson* (1835) (an Irish case), cited in Bennett on Receivers, p. 107.

(*l*) Daniell's Chancery Practice, Vol. II., 7th ed., p. 1434, note (a).

(*m*) R. S. C., Ord. 50, r. 20; and paragraph 4 of the form there referred to.

(*n*) *White* v. *Baugh* (1835), 3 Cl. & Fin. 44, 59, 65, H. L.

(*o*) *Acheson* v. *Hodges* (1841), 3 I. Eq. R. 516; *Re M'Donaghs, Minors* (1876), 10 I. R. Eq. 269. As to the position of sureties, see pp. 420 *et seq.*, *post*.

(*p*) *Cockburn* v. *Raphael* (1825), 2 Sim. & St. 453.

(*q*) Resolution of Chancery Judges of 5th July, 1900; Yearly Practice of the Supreme Court, 1913, p. 718.

(*r*) *Re Goldfields of Venezuela* (undated, but modern), C. A., cited in *Aldrich* v. *British Griffin Chilled Iron and Steel Co.*, [1904] 2 K. B. 850, 852, C. A.

(*s*) *Lane* v. *Townsend* (1852), 2 I. Ch. R. 120.

(*t*) *Vaughan* v. *Vaughan* (1743), 1 Dick. 90; *Blois* v. *Betts* (1760), 1 Dick. 336.

(*a*) *Averall* v. *Wade* (1841), Fl. & K. 341.

moneys that would otherwise come to the hands of the receiver may be directed to be paid into court (*b*).

Where the property over which the receiver is appointed is extended or increases in value, additional security may be required (*c*); and similarly, where the property decreases in value, an order may be obtained for reduction of security (*d*). The liquidator of a company, on being appointed receiver on behalf of debenture-holders, must give security in addition to what he has given as liquidator (*e*).

Increase or reduction of security.

694. When a receiver is appointed only until judgment or further order, his continuance by the judgment is in effect a new appointment, and fresh security must be given, unless the interlocutory order otherwise directs (*f*).

Continuation of appointment.

695. A receiver who acts without giving the security directed by the order of appointment is none the less liable to account (*g*), but the balance found due from him is a simple contract debt instead of a debt of record (*h*).

Acting without security.

696. All the expenses of finding security, including premiums payable to guarantee societies, must be borne by the receiver personally, unless he is acting without salary, in which case they are allowed in his accounts (*i*).

Cost of security.

697. Where trustees undertake to act as receivers without salary and to account accordingly, they will not be required to give security beyond their own recognisances (*k*).

Security required from trustee-receiver.

698. In the case of West Indian estates, managers are required to give security to account for their receipts, but not for faithful management (*l*). Receivers of West Indian estates appointed under the West Indian Incumbered Estates Acts, 1862 and 1864 (*m*), are required to give security (*n*).

West Indian estates.

(*b*) *Poole* v. *Wood* (1832), cited in 1 Seton, Judgments and Orders, 7th ed., p. 741; see *Re Eagle* (1847), 2 Ph. 201 (a lunacy case); *Gardner* v. *London, Chatham and Dover Rail. Co.* (No. 1), *Drawbridge* v. *Same*, *Gardner* v. *Same* (No. 2), *Imperial Mercantile Credit Association* v. *Same* (1867), 2 Ch. App. 201, 219.

(*c*) *Downshire* v. *Tyrrell* (1831), Hayes, 354; *Wise* v. *Ashe* (1839), 1 I. Eq. R. 210; see *Haigh* v. *Grattan* (1839), 1 Beav. 201; *Wrixon* v. *Vize* (1843), 5 I. Eq. R. 276; *Kelly* v. *Rutledge* (1845), 8 I. Eq. R. 228, 230.

(*d*) Palmer, Company Precedents, Vol. III., 11th ed., pp. 602-606.

(*e*) *Tottenham* v. *Swansea Zinc Ore Co., Ltd.* (1884), 51 L. T. 61; *Bartlett* v. *Northumberland Avenue Hotel Co., Ltd.* (1885), 53 L. T. 611, C. A.; and see, generally, title COMPANIES, Vol. V., pp. 376 *et seq.*

(*f*) *Brinsley* v. *Lynton and Lynmouth Hotel and Property Co.*, [1895] W. N. 53.

(*g*) *Smart* v. *Flood & Co.* (1883), 49 L. T. 467.

(*h*) *Re Ward, Simmons* v. *Rose, Weeks* v. *Ward* (1862), 31 Beav. 1.

(*i*) *Harris* v. *Sleep*, [1897] 2 Ch. 80, C. A.; *Re Golding* (1888), 21 L. R. Ir. 194.

(*k*) *Bainbrigge* v. *Blair* (1841), 3 Beav. 421.

(*l*) *Morris* v. *Elme* (1790), 1 Ves. 139.

(*m*) 25 & 26 Vict. c. 45; 27 & 28 Vict. c. 108.

(*n*) 1 Seton, Judgments and Orders, 7th ed., p. 780, citing Cust on West Indian Estates, pp. 147, 149.

SECT. 6. SUB-SECT. 2.—*When Dispensed with.*

Security Required.

Receiver nominated by parties interested.

699. In certain cases a receiver appointed by the court is not required to give security beyond his own personal recognisance. If all the parties interested in the property are *sui juris* and themselves nominate the receiver, security may be dispensed with at their request (*a*); but, if the nomination is made by the court on a reference to chambers, security must be given (*b*), even though all parties are *sui juris* and are willing to dispense with it (*c*).

Receiver nominated by testator.

If a testator by his will nominates a person to act as receiver of the rents and profits of realty, or if the person nominated by the parties has been employed by the testator in his lifetime as manager of the property, security may be dispensed with, notwithstanding that some of the parties interested are infants (*d*).

Receiver without salary.

Where a receiver is appointed without salary it is not unusual to dispense with security (*e*).

In cases of equitable execution.

700. In cases of equitable execution, where the appointment of a receiver is obtained not with a view to possession, but merely for the purpose of getting a charge upon the property, security is dispensed with, the plaintiff and the receiver undertaking not to act without the leave of the court (*f*), and where the judgment creditor is willing to act personally, he himself may be appointed receiver without salary and without security (*g*), and such an appointment has been made even where immediate possession was contemplated (*h*). Where the judgment debt and costs do not exceed £50, security is usually dispensed with in the King's Bench Division, the plaintiff undertaking to answer for the acts and defaults of the receiver (*i*).

Unpaid vendor as receiver.

701. Where the applicant, as unpaid vendor and equitable mortgagee, is virtually the owner of the property and the property

(*a*) *Ridout* v. *Plymouth* (*Earl*) (1737), 1 Dick. 68; *Manners* v. *Furze* (1847), 11 Beav. 30; *Bartlett* v. *Northumberland Avenue Hotel Co., Ltd.* (1885), 53 L. T. 611, C. A., *per* CHITTY, J.; *Fraser* v. *Burgess* (1860), 13 Moo. P. C. C. 314, 333.

(*b*) *Tylee* v. *Tylee* (1853), 17 Beav. 583.

(*c*) *Manners* v. *Furze, supra*; see *Conolly* v. *Codd* (1834), Hayes & Jo. 624.

(*d*) *Hibbert* v. *Hibbert* (1808), 3 Mer. 681; *Carlisle* (*Countess*) v. *Berkley* (*Lord*) (1759), Amb. 599; *Wilson* v. *Wilson* (1847), 11 Jur. 793, 794; see *Gardner* v. *Blane* (1842), 1 Hare, 381.

(*e*) *Gardner* v. *Blane, supra* (where one of several testamentary guardians and executors against whom a decree had been made in a suit by an infant for an account of rents and profits of realty, was appointed receiver without salary and without security); *Wells* v. *Wales* (1855), 4 De G. M. & G. 816; *Re Prytherch, Prytherch* v. *Williams* (1889), 42 Ch. D. 590, 598 (where a legal mortgagee in possession was himself appointed receiver without salary and without security, the mortgagor not objecting).

(*f*) *Hewett* v. *Murray* (1885), 52 L. T. 380; *Re Watkins, Ex parte Evans* (1879), 13 Ch. D. 252, 253, C. A.

(*g*) *Fuggle* v. *Bland* (1883), 11 Q. B. D. 711; *Beamish* v. *Stephenson* (1886), 18 L.R. Ir. 319; *Underhay* v. *Read* (1887), 20 Q. B. D. 209, C. A.; *Macnicoll* v. *Parnell* (1887), 35 W. R. 773.

(*h*) *Walmsley* v. *Mundy* (1884), 13 Q. B. D. 807, 808, C. A.

(*i*) See title EXECUTION, Vol. XIV., p. 124; Departmental Directions, Yearly Practice of the Supreme Court, 1913, p. 717.

is in immediate danger of destruction, he is entitled to be appointed receiver and manager without salary and without security in spite of opposition (*k*). SECT. 6. Security Required.

702. In cases where the delay incident to the completion of security might result in the loss or deterioration of the property, and especially in the case of mortgagees or debenture-holders whose security is in jeopardy, a named person is often appointed on motion to act at once as receiver (*l*), the plaintiff undertaking to be answerable for what he may receive or become liable to pay (*m*) before the completion of his security or before a receiver is duly appointed at chambers (*n*); and the order then proceeds to direct that security be given by a certain date, or that a proper person be appointed receiver, as the case may be. The plaintiff himself may, under similar circumstances, be appointed *interim* receiver without security on his undertaking not to deal with the property except under the direction of the court (*o*). Where the application is made *ex parte* an undertaking in damages may also be required (*p*), but this is not usual (*a*). In matters of urgency.

Part III.—Effect of Appointment.

SECT. 1.—*As against Parties to the Action, their Tenants and Debtors.*

703. By the order for the appointment of a receiver the court assumes control of the property affected, and from that time the parties to the action retain possession only as custodians for the court (*b*); but the receiver, when nominated, unless he is authorised Right to possession.

(*k*) *Boyle* v. *Bettws Llantwit Colliery Co.* (1876), 2 Ch. D. 726 (where the lease of a colliery was in danger of forfeiture owing to the insolvency of the purchasing company, and the mine itself in danger of destruction owing to the inability of the company to work it or to keep down rising water); and see note (*e*), p. 374, *ante*.

(*l*) *Makins* v. *Ibotson* (*Percy*) *& Sons*, [1891] 1 Ch. 133.

(*m*) See *Re Debenture Holders' Actions*, [1900] W. N. 58; 1 Seton, Judgments and Orders, 7th ed., p. 725.

(*n*) *Truman & Co.* v. *Redgrave* (1881), 18 Ch. D. 547, 550; *Sumsion* v. *Crutwell* (1833), 31 W. R. 399; *Boehm* v. *Goodhall*, [1911] 1 Ch. 155, 156.

(*o*) *Taylor* v. *Eckersley* (1876), 2 Ch. D. 302, C. A.; see *Hyde* v. *Warden* (1876), 1 Ex. D. 309, C. A. (where a plaintiff appellant was appointed receiver without security pending an appeal, on his undertaking to abide by any order the court might make, there being nothing for him to receive and only expenditure to be incurred in the preservation of the property); see also *Taylor* v. *Neate* (1888), 39 Ch. D. 538 (where the plaintiff in a partnership action was appointed *interim* receiver and manager without salary and without security); and see p. 359, *ante*.

(*p*) 1 Seton, Judgments and Orders, 6th ed., p. 755; *Rawson* v. *Rawson* (1865), 11 L. T. 595; *Taylor* v. *Eckersley*, *supra* (though the order in that case as printed in 1 Seton, Judgments and Orders, 6th ed., p. 751, does not include an undertaking in damages); and see *Evans* v. *Lloyd*, [1889] W. N. 171.

(*a*) *Re Patrick*, *Bills* v. *Tatham* (1888), as reported in 85 L. T. Jo. 398.

(*b*) *Peruvian Guano Co.* v. *Dreyfus Brothers & Co.*, [1892] A. C. 166, 187, 195.

SECT. 1. As against Parties to the Action, their Tenants and Debtors.

Order for delivery of possession.

to take possession at once (*c*), cannot take possession until he has completed his security (*d*), and even then he cannot compel delivery of possession until an order directing delivery of possession has been obtained and served on the parties (*e*). Such a direction is, however, usually inserted in the order of appointment (*f*), whether made at the trial or on an interlocutory application (*g*). The order for possession may be enforced either by attachment (*h*), or by writ of possession in the case of land (*i*); or by writ of assistance in the case of specific chattels (*k*), but these writs cannot be issued unless a time has been limited within which possession must be delivered (*l*). In a foreclosure action, though the defendant may be ordered to deliver up possession to the receiver, the court will not prejudge the action by restraining him from remaining on the premises (*m*).

Occupation rent against defendant.

704. An order may also be obtained for an occupation rent to be fixed against a defendant in occupation of any part of the premises (*n*), but this constitutes him a tenant only from the date of the order, and does not entitle the receiver, at any rate until the rights of the parties have been determined in the action, to any payment in respect of his previous possession (*o*); nor can a receiver distrain upon the goods of a defendant in possession who has not been constituted a tenant (*p*).

(*c*) *Morrison* v. *Skerne Ironworks, Ltd.* (1889), 60 L. T. 588.

(*d*) *Defries* v. *Creed* (1865), 34 L. J. (CH.) 607; *Edwards* v. *Edwards* (1876), 2 Ch. D. 291, C. A.; *Re Rollason, Rollason* v. *Rollason* (1887), 56 L. T. 303; *Re Roundwood Colliery Co., Lee* v. *Roundwood Colliery Co.*, [1897] 1 Ch. 373, C. A.; *Ridout* v. *Fowler*, [1904] 1 Ch. 658; affirmed, [1904] 2 Ch. 93, C. A.; but moneys collected by the plaintiff's solicitor pending completion of the receiver's security must be regarded as collected on behalf of the receiver and handed to him on completion of his security without any deduction in respect of a solicitor's lien for costs or an executor's right of retainer (*Wickens* v. *Townshend* (1830), 1 Russ. & M. 361; *Re Birt, Birt* v. *Burt* (1883), 22 Ch. D. 604); and as to security, see p. 371, *ante*.

(*e*) *Dove* v. *Dove* (1783), 2 Dick. 617; *Ferguson* v. *Tadman* (1820), cited in *Green* v. *Green* (1828), 2 Sim. 394, 401, 410; see *Green* v. *Green* (1829), 2 Sim. 430; *Randfield* v. *Randfield* (1859), 7 W. R. 651; *Crow* v. *Wood* (1850), 13 Beav. 271; *Re Della Rocella's Estate* (1892), 29 L. R. Ir. 464.

(*f*) *Hawkes* v. *Holland*, [1881] W. N. 128, C. A.; *Edgell* v. *Wilson*, [1893] W. N. 145.

(*g*) *Ind, Coope & Co.* v. *Mee*, [1895] W. N. 8.

(*h*) R. S. C., Ord. 42, rr. 7, 24; see *Mullarkey* v. *Donohoe* (1885), 16 L. R. Ir. 365; *Re Sacker, Ex parte Sacker* (1888), 22 Q. B. D. 179, 185, C. A.; and title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., pp. 307 *et seq.*

(*i*) R. S. C., Ord. 47; *Hall* v. *Hall* (1878), 47 L. J. (CH.) 680; and as to writ of possession, see title EXECUTION, Vol. XIV., p. 76.

(*k*) *Cazet de la Borde* v. *Othon* (1874), 23 W. R. 110; *Wyman* v. *Knight* (1888), 39 Ch. D. 165; see *Re Maudslay, Sons and Field, Maudslay* v. *Maudslay, Sons and Field*, [1900] 1 Ch. 602, 611; and as to writs of assistance, see title EXECUTION, Vol. XIV., p. 75.

(*l*) R. S. C., Ord. 41, r. 5; *Savage* v. *Bentley* (1904), 90 L. T. 641.

(*m*) *Taylor* v. *Soper* (1890), 62 L. T. 828.

(*n*) *Randfield* v. *Randfield* (1859), 7 W. R. 651; *Everett* v. *Belding* (1852), 22 L. J. (CH.) 75; *Re Burchnall, Walker* v. *Burchnall*, [1893] W. N. 171.

(*o*) *Lloyd* v. *Mason* (1835), 2 My. & Cr. 487; *Yorkshire Banking Co.* v. *Mullan* (1887), 35 Ch. D. 125.

(*p*) *Griffith* v. *Griffith* (1751), 2 Ves. Sen. 400.

SECT. 1.

As against Parties to the Action, their Tenants and Debtors.

705. The appointment of a receiver operates as an injunction restraining the parties to the action from receiving any part of the property affected by the appointment (*q*).

Appointment operating as an injunction.

The appointment of a receiver in an administration action deprives the executor of the right of obtaining possession of the assets (*r*), and consequently of his right of retainer, except as to assets received by him before the appointment (*s*).

As against executors.

The appointment of a receiver by a mortgagee out of court does not of itself prevent the mortgagee from afterwards issuing a specially indorsed writ (*t*) and obtaining judgment (*a*), provided that no moneys have come to the hands of the receiver; but, if the receiver has received moneys, and the amount due from the mortgagor is in consequence uncertain, leave to defend the action will be given (*b*); and, if the receiver has been appointed by the court in a foreclosure action, the issue of such a writ is unnecessary and improper (*c*).

As against mortgagee.

Order against tenants for payment of rent.

706. As against tenants, the receiver is entitled to an order for attornment and payment of rent to him. This is usually inserted in the order of appointment (*d*), but payment cannot be enforced until it has been obtained and served on the tenants (*e*).

Enforcement.

An order directing a tenant to pay rent to the receiver could formerly be enforced by attachment (*f*), and may still be enforced by

(*q*) *Re Sartoris's Estate, Sartoris* v. *Sartoris*, [1892] 1 Ch. 11, 22, C. A.; *Tyrrell* v. *Painton*, [1895] 1 Q. B. 202, 206, C. A.; *Re Harrison and Bottomley*, [1899] 1 Ch. 465, 471, C. A.; *Re Anglesey* (*Marquis*), *De Galve* (*Countess*) v. *Gardner*, [1903] 2 Ch. 727; *Ridout* v. *Fowler*, [1904] 1 Ch. 658, 664; *Ideal Bedding Co., Ltd.* v. *Holland*, [1907] 2 Ch. 157; *Re a Debtor, Ex parte Peak Hill Goldfield, Ltd.*, [1909] 1 K. B. 430, C. A.; *Baxter* v. *West* (1858), 28 L. J. (CH.) 169; *Brown, Janson & Co.* v. *Hutchinson & Co.*, [1895] 1 Q. B. 737, 739, C. A.

(*r*) *Kirk* v. *Houston* (1843), 5 I. Eq. R. 498; *Minford* v. *Carse*, [1912] 2 I. R. 245, 273,

(*s*) *Re Birt, Birt* v. *Burt* (1883), 22 Ch. D. 604; *Re Jones, Calver* v. *Laxton* (1885), 31 Ch. D. 440; *Re Harrison, Latimer* v. *Harrison* (1886), 32 Ch. D. 395; see p. 359, *ante;* and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 257.

(*t*) See titles JUDGMENTS AND ORDERS, Vol. XVIII., p. 190; PRACTICE AND PROCEDURE, Vol. XXIII., p. 111, 112.

(*a*) Under R. S. C., Ord. 14; see titles JUDGMENTS AND ORDERS, Vol. XVIII., p. 190; PRACTICE AND PROCEDURE, Vol. XXIII., p. 134.

(*b*) *Lynde* v. *Waithman*, [1895] 2 Q. B. 180, C. A.; and see titles JUDGMENTS AND ORDERS, Vol. XVIII., p. 192; MORTGAGE, Vol. XXI., pp. 269, 270.

(*c*) *Poulett* (*Earl*) v. *Hill* (*Viscount*), [1893] 1 Ch. 277, C. A.; *Williams* v. *Hunt*, [1905] 1 K. B. 512, C. A.

(*d*) 1 Seton, Judgments and Orders, 7th ed., p. 725; *Underhay* v. *Read* (1887), 20 Q. B. D. 209, 210, C. A. In *Hills* v. *Webber* (1901), 17 T. L. R. 513, C. A., STIRLING, L.J., doubted whether tenants could be directed to pay a moiety of their rents to a receiver representing one of two joint owners.

(*e*) *Hobhouse* v. *Hollcombe* (1848), 2 De G. & Sm. 208; *Hollier* v. *Hedges* (1853), 2 I. Ch. R. 370; *Hobson* v. *Sherwood* (1854), 19 Beav. 575; *Mullarkey* v. *Donohoe* (1885), 16 L. R. Ir. 365; *Mitchel* v. *Manchester* (*Duke*) (1750), 2 Dick. 787.

(*f*) *Batchelor* v. *Blake* (1824), 1 Hog. 98; *Anon.* (1824), 2 Mol. 499; *Brown* v. *O'Connor* (1828), 2 Hog. 77; *Williams* v. *Williams* (1863), 11 W. R. 635; *Brennan* v. *Kenny* (1852), 2 I. Ch. R. 579; *Mitchel* v. *Manchester* (*Duke*), *supra.*

SECT. 1.
As against Parties to the Action, their Tenants and Debtors.

sequestration (*g*). If after service of the order a tenant refuses to pay rent, the receiver may obtain leave to distrain (*h*) or to bring an action for the recovery of the land (*i*), and the latter remedy is available against a defendant who retains possession under a collusive tenancy agreement at an inadequate rent (*k*). If the possession by an alleged tenant has been taken after and with notice of the order, he may be brought before the court to justify his refusal without being made a party to the action (*l*).

Payment to landlord after notice of order.

Though a tenant who has not been served with an order directing payment of rent to a receiver is justified in continuing to pay rent to his landlord, yet if in fact he has notice of the appointment and consequently knows that the landlord is no longer entitled to receive the rent, he cannot resist payment over again to the receiver (*m*) unless he can plead compulsion of law (*n*).

Arrears of rent.

A receiver of rents is entitled to all arrears unpaid at the date of the order for his appointment (*o*). Tenants who pay such arrears to their landlord before they have notice of the order will not be compelled to pay a second time to the receiver, but any party to the action who, with notice of the order, collects arrears of rent or takes securities for the amount due, may be compelled to hand them over to the receiver (*p*).

Position of debtors.

707. The position of debtors is in some respects similar to that of tenants. They may be ordered to pay their debts to the receiver, even though no person exists in whose name actions could be brought

(*g*) *Church Temporalities (Commissioners) of Ireland* v. *Harrington* (1883), 11 L. R. Ir. 127, 136; and see Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4; R. S. C., Ord. 42, r. 3; Ord. 43, r. 6; title EXECUTION, Vol. XIV., pp. 79 *et seq.*

(*h*) *Mills* v. *Fry* (1815), 19 Ves. 277; Coop. G. 107; *Fitzpatrick* v. *Eyre* (1824), 1 Hog. 171; *Anon.* (1826), 1 Hog. 335; *Lucas* v. *Mayne* (1826), 1 Hog. 394; *Langley* v. *Aylmer*, *Spiller* v. *Mellifont* (1841), 3 I. Eq. R. 492.

(*i*) *Mansfield (Lord)* v. *Hamilton*, *Hobhouse* v. *Hamilton* (1804), 2 Sch. & Lef. 28; *Fitzgerald* v. *Fitzgerald* (1843), 5 I. Eq. R. 525; see *Murtin* v. *Walker* (1837), Sau. & Sc. 139 (where leave to bring ejectment was refused on special grounds). As to proceedings by a receiver, see pp. 392 *et seq.*, *post.*

(*k*) *Comyn* v. *Smith* (1823), 1 Hog. 81.

(*l*) *Reid* v. *Middleton* (1823), Turn. & R. 455; see *Walton* v. *Johnson* (1848), 15 Sim. 352.

(*m*) *Brown* v. *O'Connor* (1828), 2 Hog. 77; *Mullarkey* v. *Donohoe* (1885), 16 L. R. Ir. 365.

(*n*) *Underhay* v. *Read* (1887), 20 Q. B. D. 209, C. A.; see *Church Temporalities (Commissioners) of Ireland* v. *Harrington*, *supra.*

(*o*) *Codrington* v. *Johnstone* (1838), 1 Beav. 520, 524; *Abbott* v. *Stratton* (1846), 9 I. Eq. R. 233, 243; *Moore* v. *Donegal (Marquis)* (1847), 11 I. Eq. R. 364, 368; *Hollier* v. *Hedges* (1853), 2 I. Ch. R. 370; *Russell* v. *Russell* (1853), 2 I. Ch. R. 574; *McDonnell* v. *White* (1865), 11 H. L. Cas. 570, 583; *Underhay* v. *Read*, *supra*; *Re Annaly (Lord)*, *Crawford* v. *Annaly (Lord)* (1891), 27 L. R. Ir. 523; *Re Ind, Coope & Co., Ltd.*, *Fisher* v. *The Co.*, *Knox* v. *The Co.*, *Arnold* v. *The Co.*, [1911] 2 Ch. 223 (mortgagee's receiver entitled as against assignee for value of mortgagor). As to the rights of a first mortgagee who applies for the discharge of the receiver appointed at the instance of a puisne incumbrancer, see *Re Metropolitan Amalgamated Estates, Ltd.*, *Fairweather* v. *The Co.*, [1912] 2 Ch. 497; and title MORTGAGE, Vol. XXI., pp. 262, 263.

(*p*) *Hollier* v. *Hedges*, *supra*; *Russell* v. *Russell*, *supra.* As to the position of tenants, see, further, *John* v. *John*, [1898] 2 Ch. 573, 579, C. A.; p. 350, *ante.* As to the liability of tenants, see, further, p. 388, *post.*

SECT. 1. As against Parties to the Action, their Tenants and Debtors.

to enforce them; and refusal to comply with an order for payment to the receiver may be treated as a contempt of court (*q*), if the debtor had proper notice of the application for the order and an opportunity of disputing the debt (*r*).

Property abroad.

708. When a receiver is appointed over property situate abroad, he must take the necessary steps to obtain possession in accordance with the local law. An English court cannot and will not attempt to put its officer into possession of foreign property, though it may direct an inquiry as to the best means of obtaining possession (*s*) and make any necessary order on a defendant in this country (*t*).

SECT. 2.—*As against Other Persons.*

SUB-SECT. 1.—*Suspension of Rights of Third Parties.*

Third party in possession.

709. As against a stranger to the action who is in actual possession, the appointment of a receiver is of no effect (*a*).

Third party's claim to possession.

A stranger who is not in possession at the date of the appointment, though his rights are not affected, will not be allowed to assert them without the leave of the court (*b*), unless the order is made expressly without prejudice to his rights (*c*). Thus, proceedings in ejectment cannot be brought against the receiver without the leave of the court (*d*), and if instituted might formerly have been restrained by injunction (*e*), unless they were commenced in ignorance of the appointment of the receiver (*f*); and where such an action has been

(*q*) *Wood* v. *Hitchings* (1840), 2 Beav. 289; *Acheson* v. *Hodges* (1841), 3 I. Eq. R. 516; *Kirk* v. *Houston* (1843), 5 I. Eq. R. 498; *Croshaw* v. *Lyndhurst Ship Co.*, [1897] 2 Ch. 154, 160, 162; as to the position of the Bank of England, see *Re Spurling*, [1909] 1 Ch. 199, C. A. As to contempt, see title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., pp. 307 *et seq.*

(*r*) *Re Potts, Ex parte Taylor*, [1893] 1 Q. B. 648, C. A.

(*s*) *Houlditch* v. *Donegal* (*Marquis*) (1834), 8 Bli. (N. S.) 301, H. L.; *Salt* v. *Donegall, Cocker* v. *Donegall, Houlditch* v. *Donegall* (1835), L. & G. *temp.* Sugd. 82; *Keys* v. *Keys* (1839), 1 Beav. 425; *Smith* v. *Smith* (1853), 10 Hare, Appendix II., lxxi.; *Re Maudslay, Sons and Field, Maudslay* v. *Maudslay, Sons and Field*, [1900] 1 Ch. 602; and see title CONFLICT OF LAWS, Vol. VI., pp. 204, 207.

(*t*) *Re Huinac Copper Mines, Ltd., Matheson & Co.* v. *The Co.*, [1910] W. N. 218.

(*a*) *Davis* v. *Marlborough* (*Duke*) (1819), 2 Swan. 108, 116, 118; *Johnes* v. *Claughton* (1822), Jac. 573; *Morrogh* v. *Hoare* (1842), 5 I. Eq. R. 195, 199; *Evelyn* v. *Lewis* (1844), 3 Hare, 472; *Engel* v. *South Metropolitan Brewing and Bottling Co.*, [1891] W. N. 31; *Underhay* v. *Read* (1887), 20 Q. B. D. 209, C. A.; *Salt* v. *Cooper* (1880), 16 Ch. D. 544, C. A.

(*b*) *Johnes* v. *Claughton, supra*; *Hawkins* v. *Gathercole* (1852), 1 Drew. 12, 17; *Randfield* v. *Randfield* (1860), 1 Drew. & Sm. 310, 314; *Searle* v. *Choat* (1884), 25 Ch. D. 723; *Re Pound* (*Henry*), *Son, and Hutchins* (1889), 42 Ch. D. 402, 420, 422, C. A. As to the rights of a prior mortgagee, see *Re Amalgamated Estates, Ltd., Fairweather* v. *The Co.*, [1912] 2 Ch. 497; and title MORTGAGE, Vol. XXI., p. 262, note (*a*).

(*c*) *Davis* v. *Marlborough* (*Duke*), *supra*, at p. 115; *Underhay* v. *Read, supra*; compare *Walmsley* v. *Mundy* (1884), 13 Q. B. D. 807, C. A.

(*d*) *Bryan* v. *Cormick* (1788), 1 Cox, Eq. Cas. 422; *Angel* v. *Smith* (1804), 9 Ves. 335; *Brooks* v. *Greathed* (1820), 1 Jac. & W. 176; *Hawkins* v. *Gathercole, supra*, at p. 18; *Re Battersby's Estate* (1892), 31 L. R. Ir. 73.

(*e*) *Evelyn* v. *Lewis, supra*; *Lees* v. *Waring* (1825), 1 Hog. 216; but see Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 24 (5); title EQUITY, Vol. XIII., pp. 47 *et seq.*, 63.

(*f*) *Townsend* v. *Somervile* (1824), 1 Hog. 99.

SECT. 2. As against Other Persons.

brought by leave of the court and judgment recovered, the judgment cannot be enforced by writ of possession as against the receiver without the leave of the court (*g*).

Landlord.

710. So also, when a receiver has been appointed over leaseholds, the landlord cannot distrain for rent without the leave of the court (*h*); nor, if the receiver was appointed in an administration action, can he recover rent from the executors (*i*).

Rates.

A distraint for poor rate cannot be levied without leave (*j*).

Judgment creditor.

711. A judgment creditor cannot levy execution on property in the hands of a receiver (*k*), even though his judgment was obtained before the appointment of the receiver (*l*), or attach money in the hands of a receiver which has been directed to be paid to the judgment debtor (*m*), or retain possession of any goods he may have seized (*n*); nor is the judgment debtor allowed to sue the receiver for damages for seizure of goods (*o*).

Judgment creditors of company.

712. A receiver appointed on behalf of debenture-holders is entitled to take possession of all assets comprised in their security. His right prevails over that of a judgment creditor who has taken goods in execution but not actually sold them (*p*), or who has attached debts by garnishee proceedings but not actually obtained payment (*q*). His right also prevails over that of a solicitor to whom a sum of money has been handed to meet costs not yet incurred (*r*).

Lord of the manor.

713. When a receiver is appointed over copyholds, the lord of the manor cannot, without first obtaining the leave of the court,

(*g*) *Morris* v. *Baker* (1903), 73 L. J. (CH.) 143.

(*h*) *Russell* v. *East Anglian Rail. Co.* (1850), 3 Mac. & G. 104, 118; *Sutton* v. *Rees* (1863), 9 Jur. (N. S.) 456; *General Share and Trust Co.* v. *Wetley Brick and Pottery Co.* (1882), 20 Ch. D. 260, 261, C. A.; *Re New City Constitutional Club Co., Ex parte Purssell* (1887), 34 Ch. D. 646, 660, C. A.; and see title DISTRESS, Vol. XI., p. 180. As to a landlord's statutory right of distress against a receiver in bankruptcy, see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 291.

(*i*) *Minford* v. *Carse*, [1912] 2 I. R. 245, C. A.

(*j*) *Re British Fullers' Earth Co., Ltd., Gibbs* v. *The Co.* (1901), 17 T. L. R. 232; *De Montmorency* v. *Pratt* (1849), 12 I. Eq. R. 411.

(*k*) *Russell* v. *East Anglian Rail. Co., supra; Potts* v. *Warwick and Birmingham Canal Navigation Co.* (1853), Kay, 142; and see title EXECUTION, Vol. XIV., pp. 8, 21, note (*o*).

(*l*) *Ames* v. *Birkenhead Docks (Trustees)* (1855), 20 Beav. 332.

(*m*) *De Winton* v. *Brecon Corporation* (No. 2) (1860), 28 Beav. 200; and see title EXECUTION, Vol. XIV., p. 94. He may, however, obtain an order of attachment in the action in which the receiver was appointed; see p. 383, *post*.

(*n*) *Morrison* v. *Skerne Ironworks, Ltd.* (1889), 60 L. T. 588.

(*o*) *Re Potter, Ex parte Day* (1883), 48 L. T. 912.

(*p*) *Re Standard Manufacturing Co.*, [1891] 1 Ch. 627, C. A.; *Taunton* v. *Warwickshire (Sheriff)*, [1895] 2 Ch. 319, 323, C. A.; *Robinson* v. *Burnell's Vienna Steam Bakery Co.* (1904), 73 L. J. (K. B.) 911; and see title COMPANIES, Vol. V., p. 352.

(*q*) *Norton* v. *Yates*, [1906] 1 K. B. 112; *Cairney* v. *Back*, [1906] 2 K. B. 746; *Sinnott* v. *Bowden*, [1912] 2 Ch. 414, 421; see *Evans* v. *Rival Granite Quarries, Ltd.*, [1910] 2 K. B. 979, 990, 997, 1001 (where no receiver had been appointed); and see title EXECUTION, Vol. XIV., pp. 97, 100.

(*r*) *Re British Tea Table Co.* (1897), *Ltd., Pearce* v. *The Co.* (1910), 101 L. T. 707.

SECT. 2. As against Other Persons.

exercise his right to seize the lands *quousque* for failure to take admittance (*s*), even though he has no notice of the receivership (*t*).

Tenant's right of action.

714. A tenant who has been erroneously committed for contempt of court cannot bring an action against the receiver for false imprisonment: his proper course is to apply for a reference to the master for compensation (*u*); nor will a tenant be allowed to sue the receiver or his authorised agent in replevin or for unnecessary violence in levying a distress (*a*).

Compulsory purchasers.

715. A railway company may be restrained from continuing proceedings against a receiver for the compulsory acquisition of land (*b*), which have been commenced without leave (*c*), though in this and similar cases leave may be given to commence proceedings *de novo* on payment of costs (*d*).

SUB-SECT. 2.—*Exercise of Rights by Leave of the Court.*

Rights of strangers.

716. On any application by a stranger to enforce his rights the court will examine the claim and either give effect to it by an order in the action or, if this is impracticable, allow any necessary proceedings to be taken outside the action (*e*).

Rights of landlord.

717. A landlord whose rent is in arrear may be granted either an order on the receiver for payment out of moneys received by him (*f*), or leave to distrain (*g*), or bring ejectment (*h*), or re-enter (*i*), or leave generally to take such proceedings as he may be advised (*k*). If the goods and chattels liable to distress have been sold by the receiver appointed in an administration action, the

(*s*) *Randfield* v. *Randfield, Ex parte Garland* (1861), 3 De G. F. & J. 766, C. A.

(*t*) *Evelyn* v. *Lewis* (1844), 3 Hare, 472; and see title COPYHOLDS, Vol. VIII., p. 57.

(*u*) *Batchelor* v. *Blake* (1824), 1 Hog. 98.

(*a*) *Birch* v. *Oldis* (1837), Sau. & Sc. 146; *Re Persse, Minors, Re Joyce* (1845), 8 I. Eq. R 111; see *Swaby* v. *Dickon* (1833), 5 Sim. 629, 631; *Parr* v. *Bell* (1846), 9 I. Eq. R. 55.

(*b*) Under the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18); see titles COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 56 *et seq.*; RAILWAYS AND CANALS, Vol. XXIII., p. 623.

(*c*) *Tink* v. *Rundle* (1847), 10 Beav. 318.

(*d*) *Lees* v. *Waring* (1825), 1 Hog. 216.

(*e*) *Angel* v. *Smith* (1804), 9 Ves. 335; *Brooks* v. *Greathed* (1820), 1 Jac. & W. 176, 178; *Townsend* v. *Somervile* (1824), 1 Hog. 99; *Randfield* v. *Randfield, Ex parte Garland. supra;* see *Empringham* v. *Short* (1844), 3 Hare, 461; *Searle* v. *Choat* (1884), 25 Ch. D. 723, C. A.; *Re Maidstone Palace of Varieties, Ltd., Blair* v. *Maidstone Palace of Varieties, Ltd.*, [1909] 2 Ch. 283; *Wastell* v. *Leslie* (1846), 15 Sim. 453, n; *Gomme* v. *West* (1772), 2 Dick. 472.

(*f*) *Balfe* v. *Blake* (1850), 1 I. Ch. R. 365; *Jacobs* v. *Van Boolen, Ex parte Roberts* (1889), 34 Sol. Jo. 97; *O'Hagan* v. *North Wingfield Colliery Co.* (1882), 26 Sol. Jo. 671; see *Neate* v. *Pink* (1846), 15 Sim. 450, 452; (1851), 3 Mac. & G. 476; *Great Eastern Rail. Co.* v. *East London Rail. Co.* (1881), 44 L. T. 903, C. A.

(*g*) *Russell* v. *East Anglian Rail. Co.* (1850), 3 Mac. & G. 104, 118; *O'Hagan* v. *North Wingfield Colliery Co., supra; Hand* v. *Blow*, [1901] 2 Ch. 721, 737, C. A.

(*h*) *Morris* v. *Baker* (1903), 73 L. J. (CH.) 143.

(*i*) *General Share and Trust Co.* v. *Wetley Brick and Pottery Co.* (1882), 20 Ch. D. 260, C. A.; *Hand* v. *Blow, supra*, at pp. 724, 737.

(*k*) *Walsh* v. *Walsh* (1839), 1 I. Eq. R. 209; *Cramer* v. *Griffith* (1840), 3 I. Eq. R. 230.

SECT. 2. As against Other Persons.

landlord may obtain an order for payment out of the proceeds of sale, provided he has asserted his right to distrain prior to sale (*l*), but not otherwise (*m*); and a landlord who alleges that the lease has been forfeited for breach of covenant may be allowed to continue ejectment proceedings against the receiver, notwithstanding that they were commenced without the leave of the court (*n*).

Rights of annuitants, owners of rentcharge, and other parties with paramount interests.

718. A parson may obtain an order for payment of tithe rentcharge (*o*). The grantee of an annuity secured by a term, whose right is paramount to that of the parties to the action, may obtain leave to bring ejectment (*p*), but the court generally examines a claim under an alleged adverse title before allowing proceedings to be taken (*q*). Where lands have been conveyed to a railway company in consideration of a rentcharge and the company makes default in payment, the court allows the owner to exercise powers of distress or re-entry reserved by the conveyance (*r*), but distraint is not allowed if all goods and chattels not necessary for carrying on the undertaking have been assigned to trustees for creditors (*s*). So also a public authority may be allowed to exercise a statutory right of distress for non-payment of rates or penalties (*t*), or a gas company for default in payment for gas (*a*), provided the right is paramount to the rights of the parties (*b*).

Rights of judgment creditors.

719. A judgment creditor may be granted either an order on the receiver for payment of what is due to him (*c*), or leave to levy

(*l*) *Russell* v. *East Anglian Rail. Co.*, (1850), 3 Mac. & G. 104; *Re New City Constitutional Club Co., Ex parte Pursell* (1887), 34 Ch. D. 646, C. A.

(*m*) *Sutton* v. *Rees* (1863), 9 Jur. (N. S.) 456; *Hand* v. *Blow*, [1901] 2 Ch. 721, C. A.; see *Re British Fuller's Earth Co., Ltd., Gibbs* v. *The Co.* (1901), 17 T. L. R. 232 (where the same rule was applied on a summons in a debenture-holder's action by overseers of the poor in respect of their right of distress for poor rate).

(*n*) *Gowar* v. *Bennett* (1847), 9 L. T. (o. s.) 310.

(*o*) *Brown* v. *Brown, Ex parte Hore* (1840), 2 I. Eq. R. 409; see *Re Langleys, Minors, Langley* v. *Langley* (1838), 1 Dr. & Wal. 252; *Hawkes* v. *Smith* (1837), Sau. & Sc. 326.

(*p*) *Brooks* v. *Greathed* (1820), 1 Jac. & W. 176.

(*q*) *Angel* v. *Smith* (1804), 9 Ves. 335: *Houlditch* v. *Wallace* (1838), 5 Cl. & Fin. 629, 667, H. L.

(*r*) *Eyton* v. *Denbigh, Ruthin, and Corwen Rail. Co.* (1868), L. R. 6 Eq. 14; *Re Manchester and Milford Rail. Co., Forster* v. *The Co.* (1880), 49 L. J. (CH.) 454.

(*s*) *Eyton* v. *Denbigh, Ruthin, and Corwen Rail. Co., Rickman* v. *Johns* (1868), L. R. 6 Eq. 488; and see title RAILWAYS AND CANALS, Vol. XXIII., pp. 766, 767.

(*t*) *Pegge* v. *Neath District Tramways Co.*, [1895] 2 Ch. 508; *Re Marriage, Neave & Co., North of England Trustee, Debenture and Assets Corporation* v. *Marriage, Neave & Co.*, [1896] 2 Ch. 663, C. A.

(*a*) *Re Crosbie (Adolphe), Ltd., Johnson* v. *Crosbie (Adolphe), Ltd.* (1909), 74 J. P. 25; 8 L. G. R. 50.

(*b*) *Reeve* v. *Medway (Upper) Navigation Co.*, [1905] W. N. 75.

(*c*) *Lewis* v. *Zouche (Lord)* (1828), 2 Sim. 388; *Smith* v. *Great Eastern Rail. Co., Ex parte Thurgood* (1868), 18 L. T. 18; *Mitchell* v. *Weise, Ex parte Friedheim*, [1892] W. N. 139; see *Re Rylands Glass and Engineering Co., Ltd., York City and County Banking Co., Ltd.* v. *The Co.* (1904), 118 L. T. Jo. 87. But the order will not be made *brevi manu* where the receiver of the undertaking of a railway company has been directed to pay working expenses with liberty to the parties to apply as to payments (*Brocklebank* v. *East London Rail. Co.* (1879), 12 Ch. D. 839).

execution (*d*), and, if necessary, to take proceedings in ejectment (*e*), notwithstanding the possession of the receiver. If property which he wishes to take in execution is in possession of the receiver only in consequence of an error in the order of appointment, the court cannot give leave to levy execution, but grants an application either to discharge the order or for leave to be examined *pro interesse suo* (*f*). A judgment creditor of a tenant for life or other beneficiary to whom the receiver in an administration action has been directed to pay rents or make periodic payments out of income may obtain an order attaching such payments, so far as the moneys are in the hands of the receiver, until his debt is satisfied (*g*), or leave to issue an *elegit* against the life estate with an order on the receiver to deliver up possession (*h*); but an individual debenture-holder who recovers judgment for his own benefit after the appointment of a receiver cannot issue execution against the company, for his only right is to be paid *pari passu* with other debenture-holders (*i*). When a receiver has been appointed in a partnership action, a judgment creditor of the firm is generally given a charge on the assets, on his undertaking to deal with the charge according to the direction of the court. This protects his rights and renders immediate execution unnecessary (*k*). The solicitor in the cause may obtain a similar order in respect of his costs, on the ground that the assets have been recovered or preserved by his action (*l*).

Rights of other parties interested.

720. The owner of machinery on premises in the occupation of a receiver and manager may obtain leave to remove it (*m*). A person desiring to construct a railway on land over which a receiver has been appointed may be given leave to make proposals in chambers for acquiring the necessary rights or interests (*n*). A prior mortgagee may have an order discharging the receiver and letting him into possession, even though he be a defendant, provided he has in no way submitted to be bound by the proceedings (*o*).

(*d*) *Russell* v. *East Anglian Rail. Co.* (1850), 3 Mac. & G. 104, 125; *Potts* v. *Warwick and Birmingham Canal Navigation Co.* (1853), Kay, 142; and see title EXECUTORS, Vol. XIV., pp. 8, 9.

(*e*) *Townsend* v. *Somervile* (1824), 1 Hog. 99; *Lees* v. *Waring* (1825), 1 Hog. 216.

(*f*) *Fowler* v. *Haynes* (1863), 2 New Rep. 156.

(*g*) *Re Cowans' Estate, Rapier* v. *Wright* (1880), 14 Ch. D. 638; following *Re Warwick and Worcester Rail. Co., Prichard's Claim, Ex parte Turner, Ex parte Smith* (1860), 2 De G. F. & J. 354, C. A. (where moneys in the hands of an official manager were similarly attached); discussed and partly dissented from in *Webb* v. *Stenton* (1883), 11 Q. B. D. 518, C. A., at pp. 525, 527; and see p. 380, *ante*.

(*h*) *Gooch* v. *Haworth* (1841), 3 Beav. 428.

(*i*) *Bowen* v. *Brecon Rail. Co., Ex parte Howell* (1867), L. R. 3 Eq. 541; and see title COMPANIES, Vol. V., pp. 735, 736.

(*k*) *Kewney* v. *Attrill* (1886), 34 Ch. D. 345; *Brand* v. *Sandground* (1901), 85 L. T. 517; and see title PARTNERSHIP, Vol. XXII., p. 43, note (*d*).

(*l*) Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28; *Ridd* v. *Thorne*, [1902] 2 Ch. 344; and see title SOLICITORS.

(*m*) *Re Maryport Hematite Iron and Steel Co., Cumberland Union Banking Co.* v. *Maryport Hematite Iron and Steel Co.*, [1892] 1 Ch. 415.

(*n*) *Tink* v. *Rundle* (1847), 10 Beav. 318; *Richards* v. *Richards* (1859), John. 255.

(*o*) *Langton* v. *Langton* (1855), 7 De G. M. & G. 30, C. A.; *Walmsley* v. *Mundy* (1884), 13 Q. B. D. 807, 817, C. A.; *Re Metropolitan Amalgamated*

SECT. 2. As against Other Persons.

How the application should be made.

721. The application to the court should be made in the action in which the receiver was appointed, and not by independent proceedings (*p*), even though the claim is against the receiver for acts in excess of his authority (*q*), though such proceedings may be allowed to continue if they do not prejudice the rights of the parties to the action (*r*). An applicant for leave to bring an action, notwithstanding the appointment of a receiver, need not show a clear legal right: if the court is satisfied that there is really a question to be tried, leave is granted (*s*).

SECT. 3.—*Status of the Receiver.*

SUB-SECT. 1.—*Nature of his Possession.*

An officer of the court appointed for benefit of all the parties.

722. A receiver appointed by the court is in no sense an agent or trustee for the party at whose instance the appointment is made (*t*). He is an officer of the court appointed for the benefit of all the parties to the action (*u*), and their rights *inter se* are not affected (*v*). As between mortgagee and mortgagor, therefore, if the receiver embezzles or otherwise wastes the rents and profits, the loss must fall on the mortgagor (*a*); and, as between vendor and purchaser, the possession by a receiver appointed at the instance of the vendor is attributed to the purchaser from the date at which the purchase ought to have been completed (*b*).

Effect upon rights and liabilities of parties and strangers.

723. So also the possession by the receiver, though it necessarily displaces the possession of the owner or occupier to some extent for the purposes of the appointment (*c*), does not interfere with the

Estates, Ltd., Fairweather v. *The Co.*, [1912] 2 Ch. 497; see other cases cited in notes (*p*)—(*r*), p. 418, *post*; and see title MORTGAGE, Vol. XXI., pp. 157, note (*g*), 192,

(*p*) *Smith* v. *Effingham* (*Earl*) (1839), 2 Beav. 232; *Russell* v. *East Anglian Rail. Co.* (1850), 3 Mac. & G. 104; *Morgan* v. *Smith* (1830), 1 Mol. 541; *De Montmorency* v. *Pratt* (1849), 12 I. Eq. R. 411.

(*q*) *Searle* v. *Choat* (1884), 25 Ch. D. 723; see *General Share and Trust Co.* v. *Wetley Brick and Pottery Co.* (1882), 20 Ch. D. 260, 267, C. A.

(*r*) *Lewis* v. *Zouche* (*Lord*) (1828), 2 Sim. 388; see *Largan* v. *Bowen* (1803), 1 Sch. & Lef. 296. But, *semble*, having regard to the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 24 (5), (7), application should always be made in the action (*Searle* v. *Choat*, *supra*).

(*s*) *Lane* v. *Capsey*, [1891] 3 Ch. 411; *Empringham* v. *Short* (1844), 3 Hare, 461; *Randfield* v. *Randfield, Ex parte Garland* (1861), 3 De G. F. & J. 766, C. A. As to interference with a receiver, see pp. 387 *et seq.*, *post*.

(*t*) *Angel* v. *Smith* (1804), 9 Ves. 335; *Bacup Corporation* v. *Smith* (1890), 44 Ch. D. 395; *Ingham* v. *Sutherland* (1890), 63 L. T. 614; *Boehm* v. *Goodall*, [1911] 1 Ch. 155. As to the effect of the appointment on existing contracts, see pp. 403, 429, *post*.

(*u*) *Davis* v. *Marlborough* (*Duke*) (1819), 2 Swan. 108, 118; *Bertrand* v. *Davies* (1862), 31 Beav. 429, 436; *Searle* v. *Smales* (1855), 3 W. R. 437; *Davy* v. *Scarth*, [1906] 1 Ch. 55, 57; *Re Newdigate Colliery Co., Ltd., Newdegate* v. *The Co.*, [1912] 1 Ch. 468, C. A.; *Seagram* v. *Tuck* (1881), 18 Ch. D. 296.

(*v*) *Skip* v. *Harwood* (1747), 3 Atk. 564; *Cooke* v. *Gwyn* (1748), 3 Atk. 689; *Portman* v. *Mill* (1839), 8 L. J. (CH.) 161, 165; *White* v. *Smale* (1856), 22 Beav. 72; *Ward* v. *Royal Exchange Shipping Co. Ltd., Ex parte Harrison* (1887), 58 L. T. 174, 178; *Dreyfus* v. *Peruvian Guano Co.* (1889), 42 Ch. D. 66, 75; *Durran* v. *Durran* (1904), 91 L. T. 187, 189.

(*a*) *Rigge* v. *Bowater* (1791), 3 Bro. C. C. 365; *Hutchinson* v. *Massareene* (*Lord*) (1811), 2 Ball & B. 49, 55. As to rents collected by the receiver, see title MORTGAGE, Vol. XXI., pp. 157, 196.

(*b*) *Boehm* v. *Wood* (1823), Turn. & R. 332, 341, 345.

(*c*) Except, perhaps, in the case of a person under disability, such as an infant (*Sharp* v. *Carter* (1735), 3 P. Wms. 375, 379).

rights and liabilities of the parties to the action in relation to strangers (*d*).

It is not such an interruption of possession as prevents the Statutes of Limitation running in favour of the defendant as against strangers to the action (*e*), though it does prevent their running in favour of strangers as against the party obtaining the appointment (*f*).

Effect as regards running of time.

Though a receiver appointed by the court is not an agent and cannot, therefore, give an acknowledgment of the existence of a debt on behalf of any principal (*g*), yet payment of interest by a receiver appointed at the instance of a mortgagee is clearly payment on behalf of the mortgagor and as such sufficient to prevent the operation of the Statutes of Limitation (*h*).

Payment by receiver as acknowledgment.

724. The trustees of a settlement may apply for and obtain leasing powers under the Settled Estates Act, 1877 (*i*), and a tenant for life may with the leave of the court exercise the leasing powers conferred by that Act (*k*), notwithstanding the appointment of a receiver; for the appointment vests no estate or title in the receiver; he is merely the officer of the court to collect the rents under the title of some persons parties to the action (*l*).

Exercise of statutory powers.

725. A receiver appointed in a partnership action has no *locus standi* to appeal against a receiving order made against the firm, whatever the rights of the partners may be (*m*).

Locus standi in bankruptcy appeal.

(*d*) *Re Butler's Estate* (1863), 13 I. Ch. R. 453; *Moir* v. *Blacker* (1890), 26 L. R. Ir. 375, C. A.; *Re Ind, Coope & Co., Ltd., Fisher* v. *The Co., Knox* v. *The Co., Arnold* v. *The Co.*, [1911] 2 Ch. 223; and see *Minford* v. *Corse*, [1912] 2 I. R. 245. The possession of a receiver does not affect the right of a tenant farmer as occupier to have a fair rent fixed under the Irish Land Acts, even though the receiver is in actual possession and managing the farm (*Moir* v. *Blacker, supra*); nor does it deprive a sub-tenant of land in Ireland of any statutory or contractual right he may have to pay head-rent in case his lessor makes default therein, and to set off the amount paid against the rent payable in respect of his own tenancy (*Church Temporalities (Commissioners) of Ireland* v. *Harrington* (1883), 11 L. R. Ir. 127; Landlord and Tenant Law Amendment Act, Ireland, 1860 (23 & 24 Vict. c. 154), ss. 20, 21). As to the effect of the appointment as regards contracts, see pp. 403, 429, *post*.

(*e*) *Anon.* (1738), 2 Atk. 15, *per* Lord HARDWICKE, L.C.; *Harrisson* v. *Duignan* (1842), 2 Dr. & War. 295; *Groome* v. *Blake* (1858), 8 I. C. L. R. 428, Ex. Ch.; *Re Butler's Estate, supra*; *Penney* v. *Todd* (1878), 26 W. R. 502.

(*f*) *Wrixon* v. *Vize* (1842), 3 Dr. & War. 104; and see title LIMITATION OF ACTIONS, Vol. XIX., p. 139.

(*g*) *Whitley* v. *Lowe* (1858), 25 Beav. 421; affirmed, 2 De G. & J. 704, C. A.; see title LIMITATION OF ACTIONS, Vol. XIX., p. 79.

(*h*) *Chinnery* v. *Evans* (1864), 11 H. L. Cas. 115. As to payments by a receiver appointed out of court, see p. 339, *ante*; and see title LIMITATION OF ACTIONS, Vol. XIX., pp. 94—96.

(*i*) 40 & 41 Vict. c. 18, ss. 13, 23; and see titles LANDLORD AND TENANT, Vol. XVIII., p. 365; SETTLEMENTS.

(*k*) Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 46; see titles LANDLORD AND TENANT, Vol. XVIII., p. 359; SETTLEMENTS.

(*l*) *Vine* v. *Raleigh* (1883), 24 Ch. D. 238, 243. The same principle is doubtless applicable to the powers conferred by the Settled Land Acts; see titles LANDLORD AND TENANT, Vol. XVIII., pp. 351, note (*h*), 358 *et seq.*; SETTLEMENTS; see also *Re Beaumont, Woods* v. *Beaumont*, [1910] W. N. 181; *Re Sartoris's Estate, Sartoris* v. *Sartoris*, [1892] 1 Ch. 11, 14, 22, C. A.

(*m*) *Re Jameson and Sandys, Ex parte Cresswell and Jameson* (1891),

SECT. 3. **Status of the Receiver.**

Position as "owner."

726. A receiver of the rents of house property is not the "owner" within the meaning of the Public Health Act, 1875 (*n*), for he does not receive the rents either on his own account or as agent or trustee for any other person (*o*); nor is he the "owner" within the meaning of the Water Companies (Regulation of Powers) Act, 1887 (*p*); but where an order has been made for possession to be delivered to a receiver appointed at the instance of an incumbrancer, the receiver becomes at once the landlord of the premises for the purpose of the Landlord and Tenant Act, 1709 (*q*), and entitled, as against a judgment creditor who has levied execution subsequently to the order, to one year's arrears of rent, though the order has not been drawn up and he has not in fact taken possession, nor have the tenants attorned to him (*r*).

SUB-SECT. 2.—*Money in his Hands.*

Money in hands of receiver.

727. Money in the hands of a receiver is not *in custodiâ legis* in the same way as money in the hands of a sequestrator (*s*). It may be that if the object of the action is to determine the rights of the parties or to ascertain what incumbrances exist on an estate and what are their priorities (*t*), or to settle a dispute as to title, the receiver holds moneys coming to his hands on behalf of the persons who may ultimately prove to be entitled (*a*). But when the receiver is appointed at the instance and for the benefit of an individual, as in an ordinary case of equitable execution, or where a puisne incumbrancer or a particular class of incumbrancers or creditors obtain the appointment of a receiver on their own behalf in proceedings to which the prior incumbrancers are not parties, any funds collected by the receiver are held on behalf of the parties to the action alone according to their rights (*b*), unless the prior incumbrancers

8 Morr. 278, C. A.; and see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 303.

(*n*) 38 & 39 Vict. c. 55, s. 4; see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., p. 427, note (*o*).

(*o*) *Bacup Corporation* v. *Smith* (1890), 44 Ch. D. 395; and see *Re Sacker, Ex parte Sacker* (1888), 22 Q. B. D. 179, 183, C. A.; *Re Cornish, Ex parte Board of Trade*, [1896] 1 Q. B. 99, C. A., *per* KAY, L.J., at p. 104; *Boehm* v. *Goodall*, [1911] 1 Ch. 155.

(*p*) 50 & 51 Vict. c. 21; see *Metropolitan Water Board* v. *Brooks*, [1910] 2 K. B. 134; affirmed on other grounds, [1911] 1 K. B. 289, C. A. (where the receiver had been appointed by the parties, not by the court); see also title WATER SUPPLY; and p. 401, *post*.

(*q*) 8 Anne, c. 18, s. 1.

(*r*) *Cox* v. *Harper*, [1910] 1 Ch. 480, C. A.; *Hawkes* v. *Smith* (1837), Sau. & Sc. 712 (a case under the corresponding Irish Act, stat. (1710), 9 Anne, c. 8), and see titles DISTRESS, Vol. XI., p. 130; EXECUTION, Vol. XIV., p. 53; LANDLORD AND TENANT, Vol. XVIII., p. 358.

(*s*) *Morrogh* v. *Hoare* (1842), 5 I. Eq. R. 195, 203; *Re Hoare, Hoare* v. *Owen*, [1892] 3 Ch. 94, doubting *Delany* v. *Mansfield* (1825), 1 Hog. 234; and see title EXECUTION, Vol. XIV., p. 126.

(*t*) The decision in *Delany* v. *Mansfield, supra*, may, perhaps, be supported on this ground; see *Davoren* v. *Collins* (1838), 2 Jo. Ex. Ir. 807, and consider the difference between English and Irish practice as stated in *Robinson* v. *Thorpe* (1824), 1 Mol. 25, n.

(*a*) *Re Hoare, Hoare* v. *Owen, supra*, at p. 103; *Skip* v. *Harwood* (1747), 3 Atk. 564; *Piddock* v. *Boultbee* (1867), 16 L. T. 837.

(*b*) *Bertie* v. *Abingdon* (*Lord*) (1817), 3 Mer. 560; *Gresley* v. *Adderley*,

have actively intervened to assert their rights before the rents were collected (*c*), or unless there has been a direction to keep down interest on incumbrances of which they have elected to take the benefit (*d*). Even where prior incumbrancers are defendants to a foreclosure action they are not entitled to rents collected by the receiver in priority to the plaintiff in the absence of any special direction as to their application or inquiry as to priorities (*e*).

SECT. 4.—*Interference with Receiver's Rights.*

Liability for interference.

728. Any interference with the possession of a receiver appointed by the court is a contempt of court (*f*) and renders the offending party liable to committal, though this extreme remedy is not enforced where there has been an excusable mistake (*g*), or where an injunction will suffice (*h*); and the offending party is often excused on payment of costs (*i*). The fact that the appointment of the receiver has been improperly obtained does not justify interference with his possession; so long as the order stands it must be respected (*k*).

Instances of interference.

729. A defendant who attempts to collect rents after the appointment of a receiver (*l*), or who removes chattels after hearing the order

Gresley v. *Heathcote* (1818), 1 Swan. 573; *Ray* v. *Butler* (1826), 1 Hog. 381; *Thomas* v. *Brigstocke* (1827), 4 Russ. 64; *Salt* v. *Donegall, Cocker* v. *Donegall, Houlditch* v. *Donegall* (1835), L. & G. *temp.* Sugd. 82; *Davoren* v. *Collins* (1838), 2 Jo. Ex. Ir. 807; *Morrogh* v. *Hoare* (1842), 5 I. Eq. R. 195; see *Berney* v. *Sewell* (1820), 1 Jac. & W. 647, 650; *Re Butler's Estate* (1863), 13 I. Ch. R. 453; *Davy* v. *Price*, [1883] W. N. 226; *Morrison* v. *Morrison* (1854), 2 Sm. & G. 564; (1855), 7 De G. M. & G. 214, C. A.

(*c*) *Murtagh* v. *Tisdall, White* v. *Same, Cuffe* v. *Same, Newburgh* v. *Same, Tisdall* v. *Same* (1839), 2 I. Eq. R. 41; *Abbott* v. *Stratton* (1846), 9 I. Eq. R. 233; *Preston* v. *Tunbridge Wells Opera House, Ltd.*, [1903] 2 Ch. 323. A mere notice to the tenants to pay rent is not sufficient (*Thomas* v. *Brigstocke, supra; Re Metropolitan Amalgamated Estates, Ltd., Fairweather* v. *The Co.*, [1912] 2 Ch. 497).

(*d*) *Penney* v. *Todd* (1878), 26 W. R. 502.

(*e*) *Paynter* v. *Carew* (1854), 18 Jur. 417. As to the effect of payment into court by a receiver, see title LIMITATION OF ACTIONS, Vol. XIX., p. 191.

(*f*) *Angel* v. *Smith* (1804), 9 Ves. 335; and see title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., p. 289. As to receivers in bankruptcy, see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 61, 62.

(*g*) *Ward* v. *Swift* (1848), 6 Hare, 309, 312; and see *Re Mead, Ex parte Cochrane* (1875), L. R. 20 Eq. 282, 287.

(*h*) *Johnes* v. *Claughton* (1822), Jac. 573; *Russell* v. *East Anglian Rail. Co.* (1850), 3 Mac. & G. 104; *A.-G.* v. *St. Cross Hospital* (1854), 2 W. R. 542.

(*i*) *Hawkins* v. *Gathercole* (1852), 1 Drew. 12; *General Share and Trust Co.* v. *Wetley Brick and Pottery Co.* (1882), 20 Ch. D. 260, 261, C. A.

(*k*) *Russell* v. *East Anglian Rail. Co., supra*, at p. 115; *Ames* v. *Birkenhead Docks (Trustees)* (1855), 20 Beav. 332; *Re Battersby's Estate* (1892), 31 L. R. Ir. 73; *Re Watkins, Ex parte Evans* (1879), 13 Ch. D. 252, 256, C. A.; *Pegge* v. *Neath District Tramways Co.*, [1895] 2 Ch. 508; see *Penney* v. *Todd* (1878), 26 W. R. 502.

(*l*) *Anon.* (1824), 2 Mol. 499; *Langford* v. *Langford* (1835), 5 L. J. (CH.) 60; *Thomas* v. *Thomas* (1842), Fl. & K. 621; *Delacherois* v. *Wrixon* (1850), 2 Ir. Jur. 66, 89; see *Hollier* v. *Hedges* (1853), 2 I. Ch. R. 370;

SECT. 4. Interference with Receiver's Rights.

for a receiver and an injunction made in court, but before the order has been drawn up (*m*); a tenant who offers personal violence to the receiver (*n*); a creditor of a company who attaches debts due to the company after a receiver has been appointed in a debenture-holders' action (*o*); a partner who by circularising customers injures the partnership business which is being carried on by a receiver and manager (*p*); a stranger who, under a claim of right, enters upon land in the possession of a receiver (*q*)—all these interfere with the receiver and may be restrained by injunction, or, if necessary, by committal (*r*). Any threatened proceedings against a receiver in respect of trespass or wrongful seizure of goods instituted without the leave of the court will be restrained, unless the court is satisfied that the receiver has acted in excess of his authority (*s*). Entry into possession by a remainderman or landlord after determination of the interest (for life or years) in respect of which the receiver was appointed, though technically an interference with the possession of the court (*t*), would probably not be visited with punishment (*u*).

Interference not restrainable.

730. If the order of appointment does not clearly show over what property the receiver is appointed, interference with his possession under a claim of right will not be restrained (*a*). Similarly, if the appointment of a receiver is conditional on his giving security, interference with his possession before he completes his security does not amount to contempt of court (*b*).

A tenant who continues to pay rent to his landlord, knowing that a receiver has been appointed, cannot be attached for contempt unless he has been actually served with notice of the appointment (*c*);

Mullarkey v. *Donohoe* (1885), 16 L. R. Ir. 365; *Crow* v. *Wood* (1850), 13 Beav. 271.

(*m*) *Skip* v. *Harwood* (1747), 3 Atk. 564.

(*n*) *Fitzpatrick* v. *Eyre* (1824), 1 Hog. 171; *Mahon* v. *Mahon* (1840), Fl. & K. 18 (rescue of distress); compare *Ford* v. *Head* (1845), 8 I. Eq. R. 371.

(*o*) *Re Derwent Rolling Mills Co., Ltd., York City and County Banking Co.* v. *Derwent Rolling Mills Co., Ltd.* (1904), 21 T. L. R. 81, where the remedy by injunction was withheld on special grounds.

(*p*) *Helmore* v. *Smith* (2) (1886), 35 Ch. D. 449, C. A.; *King* v. *Dopson* (1911), 56 Sol. Jo. 51; *Dixon* v. *Dixon*, [1904] 1 Ch. 161 (where employees were induced to leave and landlord approached).

(*q*) *Fripp* v. *Bridgwater and Taunton Canal Co.* (1855), 3 W. R. 356.

(*r*) For other instances of interference with a receiver amounting to contempt of court, see title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., p. 289; *Wardle* v. *Lloyd* (1827), 2 Mol. 388; *Hayden* v. *Shearman* (1852), 2 I. Ch. R. 137; *Parker* v. *Pocock* (1874), 30 L. T. 458; *Cronin* v. *M'Carthy* (1840), Fl. & K. 49; *Dorman* v. *Dorman* (1841), 3 I. Eq. R. 385; distinguish *O'Kelly* v. *Gregg* (1838), Jo. & Car. 76.

(*s*) *Aston* v. *Heron* (1834), 2 My. & K. 390; *Re Persse, Minors, Re Joyce* (1845), 8 I. Eq. R. 111; *Parr* v. *Bell* (1846), 9 I. Eq. R. 55; *Re Potter, Ex parte Day* (1883), 48 L. T. 912; *Re Maidstone Palace of Varieties, Ltd., Blair* v. *Maidstone Palace of Varieties, Ltd.*, [1909] 2 Ch. 283.

(*t*) *Stack* v. *Royse* (1861), 12 I. Ch. R. 246, 250.

(*u*) *Britton* v. *M'Donnell* (1843), 5 I. Eq. R. 275.

(*a*) *Crow* v. *Wood, supra.*

(*b*) *Defries* v. *Creed* (1865), 34 L. J. (CH.) 607; *Edwards* v. *Edwards* (1876), 2 Ch. D. 291, C. A.

(*c*) *Mullarkey* v. *Donohoe, supra.*

SECT. 4. Interference with Receiver's Rights.

nor is a tenant guilty of contempt who, after an order for payment of rent to a receiver, pays it, under threat of proceedings, to a mortgagee in possession who is not a party to the action (*d*).

Interference with foreign assets.

731. When a receiver is appointed of the rents of land abroad, a defendant who prevents payment to the receiver is guilty of contempt, and, if he is not himself within the jurisdiction, his property within the jurisdiction may be sequestrated till he purges his contempt (*e*); but an attempt to obtain possession of foreign assets in priority to the receiver by any person who is not a party to the action is not contempt of court, because the court has not the power and never purports to give its officer possession of foreign property (*f*).

Interference with property not receivable.

732. Inasmuch as a receiver of the undertaking of a railway company appointed under the Railway Companies Act, 1867 (*g*), is not entitled to receive unpaid capital (*h*), proceedings taken by a judgment creditor against a shareholder under the Companies Clauses Consolidation Act, 1845 (*i*), to attach unpaid capital are not interference with the possession of the receiver, and it can make no difference that the shareholder and receiver are one and the same person, for example, the chairman of the company (*k*).

Part IV.—Powers and Duties.

SECT. 1.—*Receipt of the Property.*

Limitation of duties.

733. The duties of a receiver are limited to the collection of the property over which he is appointed and the payment of all moneys received into court, or as the court may direct; but he cannot compel delivery of actual possession of property without an order directing such delivery (*l*), nor can he compel tenants to pay rent (*m*) or to attorn to him without an order (*n*).

(*d*) *Underhay* v. *Read* (1887), 20 Q. B. D. 209, C. A.

(*e*) *Langford* v. *Langford* (1835), 5 L. J. (CH.) 60.

(*f*) *Re Maudslay, Sons and Field, Maudslay* v. *Maudslay, Sons and Field*, [1900] 1 Ch. 602.

(*g*) 30 & 31 Vict. c. 127, s. 4.

(*h*) *Re Birmingham and Lichfield Junction Rail. Co.* (1881), 18 Ch. D. 155; and see title RAILWAYS AND CANALS, Vol. XXIII., p. 767.

(*i*) 8 & 9 Vict. c. 16, s. 36.

(*k*) *Re West Lancashire Rail. Co.* (1890), 63 L. T. 56; and see title RAILWAYS AND CANALS, Vol. XXIII., p. 767.

(*l*) *Green* v. *Green* (1829), 2 Sim. 430; *Kirk* v. *Houston* (1843), 5 I. Eq. R. 498; see p. 376, *ante*. The order will not be made if the property is in the hands of a public officer whose duty it is to retain it in accordance with the provisions of an Act of Parliament (*Somerset* v. *Land Securities Co.*, [1894] 3 Ch. 464, C. A.). As to the distinction between a receiver and a manager, see *Re Manchester and Milford Rail. Co., Ex parte Cambrian Rail. Co.* (1880), 14 Ch. D. 645, 653, C. A.; and see pp. 424 *et seq.*, *post*.

(*m*) *Mitchel* v. *Manchester* (*Duke*) (1750), 2 Dick. 787; *Hobson* v. *Sherwood* (1854), 19 Beav. 575; 1 Seton, Judgments and Orders, 7th ed., p. 762.

(*n*) *Hobhouse* v. *Hollcombe* (1848), 2 De G. & Sm. 208.

SECT. 1. **Receipt of the Property.**

734. A receiver appointed to collect debts may exercise a reasonable discretion in giving time for payment (*o*), especially if by so doing he gains some collateral advantage for the creditors, such as security or additional security (*p*).

Collection of debts.

When a debt or right of action is of doubtful value or only enforceable at disproportionate expense, the court sometimes authorises the receiver to offer it for sale by auction (*q*).

Where the debentures or mortgages of a limited company include uncalled capital, a receiver appointed to enforce them is entitled to have calls made (*r*).

Documents of title.

735. If it is desirable on the ground of convenience that documents of title should be produced to, or handed over to, the receiver, the court may make an order for their production or delivery on such terms as may be thought fit, notwithstanding the opposition of the person legally entitled to hold them (*s*), or of a solicitor asserting a lien for costs (*a*).

Court rolls.

A receiver appointed over a manor is not entitled to act as steward of the manor, and, therefore, not entitled to possession of the court rolls; but, if the acting steward has been guilty of misconduct, the lord of the manor may obtain an order for delivery of the court rolls to the receiver in the action (*b*).

Rents.

736. A receiver appointed to receive rents without prejudice to the rights of prior incumbrancers ought not to take possession by serving notice on the tenants to pay rent to him, after a similar notice has been served by a prior incumbrancer (*c*).

Duty to take possession and give notice.

737. A receiver of chattels should take possession of them at the earliest possible moment, so that they may not be in the "order and disposition" of the defendant in case of bankruptcy (*d*). So, also, a

(*o*) A receiver appointed under the Charitable Loan Societies (Ireland) Acts, 1843 (6 & 7 Vict. c. 91), s. 45, and 1900 (63 & 64 Vict. c. 25), s. 4, has the same power of compromising debts as the society itself (*O'Reilly* v. *Connor, Same* v. *Allen*, [1904] 2 I. R. 601, C. A.). As to the proper course to be adopted by a receiver, in possession of books and papers relating to a firm of solicitors, to make out the bills of costs, see *Ray* v. *Flower Ellis* (1912), 56 Sol. Jo. 724, C. A.

(*p*) *Willatts* v. *Kennedy* (1831), 8 Bing. 5.

(*q*) *Parker* v. *Dunn* (1845), 8 Beav. 497; *Wood* v. *Woodhouse and Rawson United*, [1896] W. N. 4.

(*r*) See title COMPANIES, Vol. V., p. 343.

(*s*) *Re Ind, Coope & Co., Fisher* v. *The Co.* (1909), 26 T. L. R. 11, C. A. (where trustees for the debenture holders objected to hand over the deeds of property specifically mortgaged to them).

(*a*) *Belaney* v. *Ffrench* (1873), 8 Ch. App. 918; *Re Caudery, London Joint Stock Bank* v. *Wightman* (1910), 54 Sol. Jo. 444; and see *Warburton* v. *Edge* (1839), 9 Sim. 508, as explained in *Re Hawkes, Ackerman* v. *Lockhart*, [1898] 2 Ch. 1, C. A.; see also *Brunton* v. *Electrical Engineering Corporation*, [1892] 1 Ch. 434.

(*b*) *Rawes* v. *Rawes* (1836), 7 Sim. 624; *Windham* v. *Giubilei* (1871), 40 L. J. (CH.) 505; *Re Jennings, a Solicitor*, [1903] 1 Ch. 906; and see title COPYHOLDS, Vol. VIII., pp. 15, 16. For form of appointment out of court of a receiver of a manor, see Encyclopædia of Forms and Precedents, Vol. I., p. 392.

(*c*) *Searle* v. *Choat* (1884), 25 Ch. D. 723, C. A.; as to the right of a receiver to rents, see p. 377, *ante*.

(*d*) *Taylor* v. *Eckersley* (1877), 5 Ch. D. 740; see *Edwards* v. *Edwards* (1876), 2 Ch. D. 291, C. A.; and see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 173.

SECT. 1. Receipt of the Property.

receiver of book debts should give notice of his appointment to the debtors, for if he leaves the debts in the apparent ownership of the creditor he may find his title ousted by a subsequent assignee (*e*), or by the trustee in a subsequent bankruptcy (*f*); and, in the case of debts due from a foreign firm, or indeed of any foreign property, if he neglects to perfect his title or obtain possession in accordance with the local law, other parties who show greater diligence may obtain priority (*g*). For the same reason a receiver of property comprised in a settlement should at once give notice of his appointment to the settlement trustees (*h*).

Renewal of leaseholds.

738. When a receiver is appointed over leaseholds for lives, perpetually renewable, an inquiry will be directed, if necessary, as to whether it will be for the benefit of the parties that a renewal should be obtained and on what terms (*i*).

SECT. 2.—*Distraint.*

When leave of the court necessary.

739. A receiver appointed by the court may distrain for one year's rent without the sanction of the court (*j*), but if the rent be in arrear for more than a year the leave of the court should be obtained, at any rate in a case where the letting is not in the receiver's name and the tenant has not attorned to him (*k*). When there has been no letting by the receiver and no attornment to him, the distraint should be in the name not of the receiver, but of the person beneficially entitled (*l*). If the person beneficially entitled is not ascertained, or the receiver is unable to obtain information as to the amount of rent in arrear, an application to the court is necessary in any case (*m*).

When receiver alone can distrain.

The distraint should, however, be made in the name of the receiver if either the letting has been in his own name (*n*) or the tenant has attorned to him (*o*), for in either case the tenant is estopped from questioning his landlord's title, even though it may

(*e*) *Wigram* v. *Buckley*, [1894] 3 Ch. 483; *Re Ind, Coope & Co., Fisher* v. *The Co., Knox* v. *The Co., Arnold* v. *The Co.*, [1911] 2 Ch. 223, 233.

(*f*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44; *Rutter* v. *Everett*, [1895] 2 Ch. 872.

(*g*) *Re Maudslay, Sons and Field, Maudslay* v. *Maudslay, Sons and Field*, [1900] 1 Ch. 602; and see title CONFLICT OF LAWS, Vol. VI., p. 207.

(*h*) *Ideal Bedding Co., Ltd.* v. *Holland*, [1907] 2 Ch. 157, 169.

(*i*) *Palmer* v. *Newport* (1824), 1 Hog. 133; *Morgell* v. *Royce* (1831), 2 Hog. 235; *Mulhall* v. *O'Brien* (1837), Sau. & Sc. 150.

(*j*) *Pitt* v. *Snowden* (1752), 3 Atk. 750; *Brandon* v. *Brandon* (1821), 5 Madd. 473; *Bennett* v. *Robins* (1832), 5 C. & P. 379; *Ward* v. *Shew* (1833), 9 Bing. 608; see *Re Powers, Manisty* v. *Archdale* (1890), 63 L. T. 626; *Swaby* v. *Dickon* (1833), 5 Sim. 629; and see p. 377, *ante*; title DISTRESS, Vol. XI., p. 130.

(*k*) *Brandon* v. *Brandon, supra*; *Cornwalls, Minors* (1824), 1 Hog. 146; *Anon.* (1836), 1 Jo. Ex. Ir. 613.

(*l*) *Shelly* v. *Pelham* (1747), 1 Dick. 120; *Pitt* v. *Snowden, supra*; *Brandon* v. *Brandon, supra*; see *Justice* v. *James* (1899), 15 T. L. R. 181, C. A., *per* CHITTY, L.J., at p. 182.

(*m*) *Pitt* v. *Snowden, supra*; *Mills* v. *Fry* (1815), 19 Ves. 277; Coop. G. 107.

(*n*) *Dancer* v. *Hastings* (1826), 12 Moore (C. P.), 34.

(*o*) *Raincock* v. *Simpson* (1764), cited 1 Dick. 120; *Hughes* v. *Hughes* (1790), 1 Ves. 161; 3 Bro. C. C. 87; *Evans* v. *Mathias* (1857), 7 E. & B. 590.

SECT. 2. Distraint.

appear on the face of the documents that he is a mere receiver without any legal reversion to which a right of distress could attach (*p*); and not only is the receiver the proper person to distrain, but he alone can distrain in such cases (*q*), and his power continues notwithstanding the abatement of the action (*r*).

Employment of bailiff.

A receiver may employ a bailiff to distrain, though he may not delegate his authority generally (*s*).

SECT. 3.—*Institution of Proceedings.*

In bankruptcy.

740. A receiver is justified in taking all steps necessary to get in the assets he is appointed to collect. He may, for instance, prove in his own name in the bankruptcy of a debtor to the estate (*t*); and though, not being himself a creditor, he cannot as a rule present a bankruptcy petition (*a*), yet he may do so if he has taken an assignment of a debt in his own name (*b*).

Instances in which receiver may sue.

741. Though a receiver cannot generally maintain an action in his own name, since no property is vested in him (*c*), yet if he has an independent cause of action, the fact that he is receiver does not disqualify him from suing (*d*). He may, for instance, sue as the holder of a bill of exchange or promissory note (*e*), or as the occupier of business premises (*f*), or as the bailee of chattels to whom possession has been delivered by order of the court (*g*), or as the assignee of a debt (*h*), or as landlord, if the letting has been in his name (*i*), and he may sue on a covenant for payment of rent to himself, though he is not a party to the lease (*k*); and a receiver and

(*p*) *Jolly* v. *Arbuthnot* (1859), 4 De G. & J. 224; *Morton* v. *Woods* (1869), L. R. 4 Q. B. 293, Ex. Ch.; and see, generally, titles ESTOPPEL, Vol. XIII., pp. 402 *et seq.*; LANDLORD AND TENANT, Vol. XVIII., p. 358.

(*q*) *Evans* v. *Mathias* (1857), 7 E. & B. 590; *Bayly* v. *Went* (1884), 51 L. T. 764; *Woolston* v. *Ross*, [1900] 1 Ch. 788.

(*r*) *Newman* v. *Mills* (1825), 1 Hog. 291; *Brennan* v. *Kenny* (1852), 2 I. Ch. R. 579. The power must not be exercised oppressively (*Lucas* v. *Mayne* (1826), 1 Hog. 394).

(*s*) *Birch* v. *Oldis* (1837), Sau. & Sc. 146.

(*t*) *Armstrong* v. *Armstrong* (1871), L. R. 12 Eq. 614.

(*a*) *Re Muirhead, Ex parte Muirhead* (1876), 2 Ch. D. 22, 26, C. A.; *Re Sacker, Ex parte Sacker* (1888), 22 Q. B. D. 179, C. A.; *Re O'Gorman, Ex parte Bale*, [1899] 2 Q. B. 62, 64; see *Williams* v. *Harding* (1866), L. R. 1 H. L. 9, 23, 26; and see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 36.

(*b*) *Re Macoun*, [1904] 2 K. B. 700, C. A.; and see title CHOSES IN ACTION, Vol. IV., p. 373.

(*c*) *Re Sartoris's Estate, Sartoris* v. *Sartoris*, [1892] 1 Ch. 11, 14, 22, C. A.

(*d*) *Re Sacker, Ex parte Sacker, supra*, at p. 185; *Scott* v. *Platel* (1847), 2 Ph. 229.

(*e*) *Re Lewis, Ex parte Harris* (1876), 2 Ch. D. 423; *O'Reilly* v. *Connor, Same* v. *Allen*, [1904] 2 I. R. 601, C. A.

(*f*) *Husey* v. *London Electric Supply Corporation*, [1902] 1 Ch. 411, C. A.

(*g*) *Hills* v. *Reeves* (1882), 31 W. R. 209, C. A., *per* JESSEL, M.R.; and see *Purkiss* v. *Holland* (1887), 31 Sol. Jo. 702, C. A.; *Re Rollason, Rollason* v. *Rollason* (1887), 56 L. T. 303 (receiver as claimant in interpleader proceedings).

(*h*) *Re Macoun, supra.*

(*i*) *Dancer* v. *Hastings* (1826), 12 Moore (C. P.), 34; 4 Bing. 2; and see title LANDLORD AND TENANT, Vol. XVIII., p. 358.

(*k*) Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 5; *Lloyd* v. *Byrne*

SECT. 3. Institution of Proceedings.

manager may sue in respect of his business transactions, as for the recovery of goods improperly detained (*l*) or for the price of goods sold and delivered by him or delivered under a contract which has been assigned to him, though in the latter case subject to any right of set-off to which the original contractor is entitled (*m*).

Interpleader issue.

742. When a receiver is claimant in interpleader proceedings he is not called upon to pay the value of the goods into court in the usual way, for it is not necessary for the protection of the rival claimant that the receiver, being an officer of the court, should do more than undertake to hold the goods subject to the order of the court (*n*).

Improper proceedings.

743. A receiver who either institutes or defends proceedings without the previous sanction of the court runs the risk of having his costs disallowed if his action is not approved (*o*). The court does not lightly authorise proceedings if the parties interested object (*p*), especially if the receiver is a solicitor (*q*), though it is not now the practice to give the conduct of an action to the receiver personally (*r*). An inquiry will, if necessary, be directed whether it will be for the benefit of the parties interested that proceedings should be taken or defended (*s*); but the parties themselves have no power to dictate whether proceedings shall or shall not be taken or defended (*t*).

A receiver should not make applications to the court in his own name, unless the parties to the action have refused to do so (*u*) or have no *locus standi* (*a*); and an application made by the receiver

(1888), 22 L. R. Ir. 269, C. A. (where the lease was made, in accordance with Irish practice, by the Land Judge to the tenant. The tenant covenanted with the lessor and also with the receiver (though the receiver was not a party to the deed) to pay rent "to the lessor or to the receiver," but there was no order on the tenant to attorn to the receiver); see also Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 10 (1).

(*l*) *Moss Steamship Co., Ltd.* v. *Whinney*, [1912] A. C. 254; and see title TROVER AND DETINUE.

(*m*) *Forster* v. *Nixon's Navigation Co., Ltd.* (1906), 23 T. L. R. 138.

(*n*) *Purkiss* v. *Holland* (1887), 31 Sol. Jo. 702, C. A.

(*o*) *Swaby* v. *Dickon* (1833), 5 Sim. 629; *Re Dunn, Brinklow* v. *Singleton*, [1904] 1 Ch. 648; *Conyers* v. *Crosbie* (1844), 6 I. Eq. R. 657.

(*p*) *Dacie* v. *John* (1824), M'Cle. 575; *Murtin* v. *Walker's Executors* (1837), Sau. & Sc. 139.

(*q*) *Della Cainea* v. *Hayward* (1825), M'Cle. & Yo. 272.

(*r*) *Re Hopkins, Dowd* v. *Hawtin* (1881), 19 Ch. D. 61, C. A.

(*s*) *Anon.* (1801), 6 Ves. 287; *Cramer* v. *Griffith* (1840), 3 I. Eq. R. 230; *Bowen* v. *Brecon Rail. Co., Ex parte Howell* (1867), L. R. 3 Eq. 541; see *Birch* v. *Oldis* (1837), Sau. & Sc. 146; *Callaghan* v. *Reardon* (1837), Sau. & Sc. 682; *Nangle* v. *Fingall* (*Lord*) (1824), 1 Hog. 142; *Cooke* v. *Cooke* (1826), 1 Hog. 182.

(*t*) *Viola* v. *Anglo-American Cold Storage Co.*, [1912] 2 Ch. 305.

(*u*) *Miller* v. *Elkins* (1825), 3 L. J. (O. S.) (CH.) 128; *Wrixon* v. *Vize* (1843), 5 I. Eq. R. 276; *Ireland* v. *Eade* (1844), 7 Beav. 55; *Parker* v. *Dunn* (1845), 8 Beav. 497; *Re Sacker, Ex parte Sacker* (1888), 22 Q. B. D. 179, C. A., *per* FRY, L.J., at p. 185; see *Re Cooper* v. *Cooper* (1839), 2 I. Eq. R. 155; *Dorset* (*Duke*) v. *Crosbie* (1837), Sau. & Sc. 683; *Clarke* v. *Fisher* (1839), Sau. & Sc. 684; *Richards* v. *Goold* (1844), 7 I. Eq. R. 209; *Re Doolan* (1843), 2 Con. & Law 232; *Boehm* v. *Goodall*, [1911] 1 Ch. 155; *Re Thomas, Bartley* v. *Thomas*, [1911] 2 Ch. 389, 391.

(*a*) *Chater* v. *Maclean* (1855), 1 Jur. (N. S.) 175, where the plaintiff's

SECT. 3. Institution of Proceedings.

in support of the claim of one of the parties in an action for the determination of their relative rights is improper and may be refused with costs, to be paid by the receiver personally (*b*).

A receiver has no vested right in his appointment which can entitle him to litigate for the profits of his receivership (*c*).

SECT. 4.—*Creation and Determination of Leases and Tenancies.*

When leave necessary.

744. When a receiver is appointed of the rents and profits of land, it is not the practice to insert in the order an express power of leasing. The receiver may let for any term not exceeding three years without the sanction of the court (*d*), but for longer leases the approval of the court must be obtained on summons at chambers, and such leases are made in the name not of the receiver, but of the persons beneficially entitled (*e*). If, however, the title to the property is in dispute, the receiver may be authorised to grant leases in his own name, and a tenant who accepts such a lease will be estopped from questioning the rights of the receiver as landlord (*f*).

Lease in receiver's name.

Leases of property abroad.

In the case of property situate abroad, with a view to preventing the delay and expense of applications to the English courts, an inquiry may be directed as to what should be the term beyond which the receiver ought not to let without leave (*g*).

Determination of tenancies.

745. The receiver may, without the leave of the court, determine tenancies from year to year by notice to quit, though the tenancies have been created before his appointment and the tenants have not attorned to him (*h*); and a notice to quit served by the receiver in his own name is a demand for possession by the landlord or his lawfully authorised agent sufficient to support a claim for double rent in case of holding over under the Landlord and Tenant Act,

motion to have a firm of solicitors, who acted for both the plaintiff and the receiver, made liable for misappropriation of moneys paid to them by the receiver was dismissed partly on the ground that the payment was made to them as agents for the receiver, who was not moving the court.

(*b*) *Comyn* v. *Smith* (1823), 1 Hog. 81.

(*c*) *Re Joseph, Ex parte Cooper* (1877), 6 Ch. D. 255, C. A.

(*d*) *Shuff* v. *Holdaway* (1863), Daniell's Chancery Practice, Vol. II., 7th ed., p. 1443; and see *Duffield* v. *Elwes* (1849), 11 Beav. 590; *Vincent* v. *Gubbins* (1830), Hayes, 29; and see title LANDLORD AND TENANT, Vol. XVIII., p. 358. A receiver of rents appointed under the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), has such powers of letting and management as the court may direct; see *ibid.*, s. 71; *Neale* v. *Baily* (1875), 23 W. R. 418; and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 201.

(*e*) Where trustees of a will had refused to recognise the right of a tenant for life to possession, a receiver was appointed at her request and directed to give her the option of becoming tenant, the receiver being authorised to inspect the property from time to time and see that she kept it in proper repair (*Baylies* v. *Baylies* (1844), 1 Coll. 537).

(*f*) *Dancer* v. *Hastings* (1826), 12 Moore (C. P.), 34; 4 Bing. 2; and see, further, titles ESTOPPEL, Vol. XIII., pp. 402 *et seq.*; LANDLORD AND TENANT, Vol. XVIII., p. 358.

(*g*) —— v. *Lindsey* (1808), 15 Ves. 91.

(*h*) *Doe* d. *Marsack* v. *Read* (1810), 12 East, 57; *Crosbie's Lessee* v. *Barry* (1839), Jo. & Car. 106; see *Doe* d. *Manvers* (*Earl*) v. *Mizem* (1837), 2 Mood. & R. 56. A *dictum* to the contrary in *Wynne* v. *Newborough* (*Lord*) (1790) 1 Ves. 164; 3 Bro. C. C. 87, no longer represents the practice on this point.

1730 (*i*). The sanction of the court should be obtained before any surrender of a lease is accepted (*j*).

Rearrangement of tenancies.

746. Though a receiver is bound to let the estate to the best advantage (*k*), it would appear that he is not justified in dispossessing tenants without the leave of the court merely for the purpose of raising rents or of dividing the estate into fewer and larger holdings (*l*); the court does not allow rents to be reduced or arrears to be forgiven or compounded for, unless the parties interested consent (*m*).

SECT. 5.—*Expenditure of Money on Repairs etc.*

Leave as a rule necessary.

747. A receiver appointed by the court without express powers of management is not in general justified in incurring expenditure without the sanction of the court (*n*), though he may be allowed in his accounts any expenditure which is shown to have been beneficial to the parties interested (*o*).

Disallowance of payments.

748. He may execute small repairs on his own initiative (*p*), but if he spends any considerable sum on repairs without the previous sanction of the court he runs the risk of having the amount, or so much of it as is considered excessive, disallowed in his accounts (*q*).

Inquiries.

An inquiry will be directed, if necessary, whether the expenditure has been reasonable and beneficial to the parties interested (*r*); but, if the receiver has disregarded a positive direction of the court not to spend further money on repairs, such an inquiry will be refused and the payments will be disallowed (*s*).

(*i*) 4 Geo. 2, c. 28, s. 1; *Wilkinson* v. *Colley* (1771), 5 Burr. 2694; *Doe* d. *Marsack* v. *Read* (1810), 12 East, 57; see *Jones* v. *Phipps* (1868), L. R. 3 Q. B. 567, 572; and see title LANDLORD AND TENANT, Vol. XVIII., p. 555.

(*j*) *Davidson* v. *Armstrong* (1837), Sau. & Sc. 135.

(*k*) *Wynne* v. *Newborough* (*Lord*) (1790), 1 Ves. 164.

(*l*) *Wynne* v. *Newborough* (*Lord*), *supra*; *Mansfield* (*Lord*) v. *Hamilton*, *Hobhouse* v. *Hamilton* (1804), 2 Sch. & Lef. 28; *Alven* v. *Bond* (1841), Fl. & K. 196, 223; and consider *Carmichael* v. *Greenock Harbour Trustees*, [1910] A. C. 274 (where it was held that a receiver of the tolls of a public undertaking could not increase the rates against the wish of those responsible for the management).

(*m*) *Evans* v. *Taylor* (1837), Sau. & Sc. 681; *Davis* v. *Cotter* (1837), Sau. & Sc. 685.

(*n*) *Fletcher* v. *Dodd* (1789), 1 Ves. 85; *Morris* v. *Elme* (1790), 1 Ves. 139; *Re Manchester and Milford Rail. Co., Ex parte Cambrian Rail. Co.* (1880), 14 Ch. D. 645, 648, 653, C. A. In Ireland, in a time of scarcity and distress, a receiver has been allowed to expend money in relieving and employing poor tenants (*Jackson, a Minor, Jackson* v. *Jackson* (1831), 2 Hog. 238).

(*o*) *Tempest* v. *Ord* (1816), 2 Mer. 55; *Whitley* v. *Lowe* (1858), 25 Beav. 421; 2 De G. & J. 704; *Re Gomersall, Ex parte Gordon* (1875), L. R. 20 Eq. 291; *Macartney* v. *Walsh* (1830), Hayes, 29, n.

(*p*) *Thornhill* v. *Thornhill* (1845), 14 Sim. 600; *Re Graham, Graham* v. *Noakes*, [1895] 1 Ch. 66, 72. £30 per annum has been suggested as a limit (Daniell's Chancery Practice, Vol. II., 7th ed., p. 1444, note (o)); and see *Dean* v. *Donovan* (1833), Hayes & Jo. 218.

(*q*) *Re Graham, Graham* v. *Noakes*, *supra*.

(*r*) *Blunt* v. *Clitherow* (1802), 6 Ves. 799; *A.-G.* v. *Vigor* (1805), 11 Ves. 563; *Tempest* v. *Ord*, *supra*.

(*s*) *Garland* v. *Garland* (undated), cited in *Blunt* v. *Clitherow*, *supra*, at p. 800.

SECT. 5.

Expenditure of Money on Repairs etc.

Sale of timber.

A receiver is sometimes authorised to cut and sell timber for the purpose of repairs (*t*).

Maintenance of licences.

A receiver of licensed premises may, and should, pay any duties necessary to preserve the licences (*u*).

SECT. 6.—*Discharge of Outgoings.*

Fire insurance premiums.

749. A receiver may insure premises against loss or damage by fire either in his own name or in the name of persons beneficially interested, or he may keep on foot an existing policy; and the premiums paid by him for this purpose are allowed in his accounts (*a*).

Rent, rates, and taxes.

750. A receiver is also justified in paying head-rent (*b*), rates (*c*), taxes, and other outgoings properly chargeable against him in respect of the property of which he is in occupation (*d*).

Mortgage interest.

751. A receiver is not, it is conceived, justified in paying interest on incumbrances, unless he has been expressly ordered to do so (*e*).

Application of rent and profits by receiver appointed at instance of mortgagees.

A receiver appointed at the instance of incumbrancers is usually directed to apply the rents and profits received by him in keeping down interest according to priorities. It is only in very special circumstances that he is allowed to apply them in reduction of principal (*f*). A direction to a receiver to keep down the interest on incumbrances out of rents received by him does not operate as an appropriation of such rents or of so much of them as may be required for payment of all interest; it is made for the benefit of incumbrancers only so far as they choose to avail themselves of it, and if any of them omit to apply for their interest they are presumed to rely on their security both for interest and principal. If,

(*t*) *A.-G.* v. *Boothby* (1860), 1 Seton, Judgments and Orders, 6th ed., p. 799. As to timber blown down, see *Crofts* v. *Poe* (1839), Jo. & Car. 193.

(*u*) *Re Hoy's Estate* (1892), 31 L. R. Ir. 66.

(*a*) *Re Graham, Graham* v. *Noakes*, [1895] 1 Ch. 66.

(*b*) *Walsh* v. *Walsh* (1839), 1 I. Eq. R. 209; *Balfe* v. *Blake* (1850), 1 I. Ch. R. 365; *Jacobs* v. *Van Boolen, Ex parte Roberts* (1889), 34 Sol. Jo. 97; and see p. 401, *post*. A receiver of rents appointed under the Tithe Rentcharge (Ireland) Act, 1838 (1 & 2 Vict. c. 109), s. 30 (and *semble*, under the Tithe Act, 1891 (54 & 55 Vict. c. 8)), is not, however, concerned with the payment of head-rent, for the appointment is merely in lieu of the remedy by distress, to receive the amount of the rentcharge and costs, and nothing more (*Saunderson* v. *Stoney* (1839), 2 I. Eq. R. 153).

(*c*) See *Re Mannesmann Tube Co., Ltd., Von Siemens* v. *Mannesmann Tube Co., Ltd.*, [1901] 2 Ch. 93.

(*d*) *Madden* v. *Wilson* (1854), 6 Ir. Jur. 129. As to the payment of preferential debts by a receiver appointed by debenture-holders, or in a debenture-holders' action, see title COMPANIES, Vol. V., pp. 374, 375; and, as to the payment of income tax, see title INCOME TAX, Vol. XVI., p. 676. As to the powers of a receiver who is also manager, see pp. 430, 431, *post*.

(*e*) *Anon.* (1821), Madd. & G. 9; and see *Wastell* v. *Leslie* (1846), 15 Sim. 453, n.

(*f*) *Re Kearney's Estate* (1890), 25 L. R. Ir. 89, distinguishing *Hutchins* v. *Hutchins* (1854), 4 I. Ch. R. 224 (where prior charges bore interest and later ones did not), and *Re Henkell's Estate* (1889), 23 L. R. Ir. 540 (where the first mortgage bore interest at 8 per cent.).

therefore, the security comes to an end by the expiration of a term or of a life interest they are not entitled to an account of rents accrued before the determination of the security (*g*). SECT. 6. Discharge of Outgoings.

SECT. 7.—*Raising of Money.*

752. When immediate expenditure is required for the preservation of property, a receiver may be authorised to borrow money for the purpose, and the amount will be charged upon the property in priority to all existing incumbrances (*h*); but such an order is not made unless a case of salvage is established (*i*). Thus, a receiver has been allowed to raise, by a charge on the property, a sum of money required to enable him to effect a transfer of mortgages, the holders of which were pressing for payment (*k*). Borrowing powers.

SECT. 8.—*Disability to Purchase or Take a Lease.*

753. A receiver, being in a fiduciary position towards the persons beneficially interested, cannot purchase, either in his own name or through the intervention of a trustee, any part of the property over which he is appointed without the sanction of the court (*l*); and the court will not authorise a receiver to bid at a sale, unless very special circumstances are shown, or unless all persons interested in the property are *sui juris* and consent (*m*); for a receiver has opportunities of acquiring and making use of information accessible only to himself, and the court might be baffled if it were to inquire in each case whether the receiver had in fact taken advantage of such opportunities (*n*). Disability to purchase arising from fiduciary relationship.

754. Even though the sale has been at a fair price and without any circumstances of fraud, concealment or undue advantage, such as would be sufficient to avoid the transaction in the case of a stranger, the receiver is not allowed to retain the benefit of his purchase as against the parties interested, other than a vendor who elects to stand by his bargain (*o*); and it would appear that the vendor himself, though he alleges none of the recognised grounds for rescission, Transactions set aside unless affirmed by parties *sui juris*.

(*g*) *Bertie* v. *Abingdon* (*Lord*) (1817), 3 Mer. 560; *Gresley* v. *Adderley*, *Gresley* v. *Heathcote* (1818), 1 Swan. 573; *Flight* v. *Camac* (1856), 25 L. J. (CH.) 654; see *Davy* v. *Price*, [1883] W. N. 226, 227; and see title MORTGAGE, Vol. XXI., pp. 158, note (*i*), 196.

(*h*) *Greenwood* v. *Algesiras* (*Gibraltar*) *Rail. Co.*, *Same* v. *Same*, [1894] 2 Ch. 205, C. A.; *Re New Zealand Midland Rail. Co.*, *Smith* v. *Lubbock*, [1901] W. N. 105.

(*i*) *I.e.*, unless the receiver is also manager, as to which see p. 431, *post*.

(*k*) *Chaplin* v. *Barnett* (1912), 28 T. L. R. 256, C. A.

(*l*) *Alven* v. *Bond* (1841), Fl. & K. 196; *Nugent* v. *Nugent*, [1908] 1 Ch. 546, C. A.; and see, generally, titles EQUITY, Vol. XIII., pp. 156 *et seq.*; TRUSTS AND TRUSTEES.

(*m*) *Anderson* v. *Anderson* (1846), 9 I. Eq. R. 23; see *Alven* v. *Bond*, *supra*, at p. 214.

(*n*) *Eyre* v. *M'Donnell* (1864), 15 I. Ch. R. 534; *Alven* v. *Bond*, *supra*; *Nugent* v. *Nugent*, *supra*.

(*o*) *Boddington* v. *Langford* (1845), 15 I. Ch. R. 558; *Nugent* v. *Nugent*, *supra*.

SECT. 8. Disability to Purchase or Take a Lease.

may have the transaction set aside on grounds of public policy alone (*p*).

If all parties interested are *sui juris*, they may, of course, elect to affirm the sale (*q*); but, if any of them are under disability or object to the sale, the court either sets aside the transaction altogether (*a*), or declares that the receiver holds the property in trust for the persons who would be entitled but for the sale (*b*). A declaration of this sort is not, however, made so as to prejudice a vendor who repudiates the sale (*c*).

Receiver's charge for purchase-money.

755. The receiver is entitled to a charge on the property with interest at 4 per cent. for any purchase-money he may have actually paid (*d*), and he is also allowed credit for any sums that he has expended on the property since his purchase by which the estate is benefited (*e*).

Disability to take a lease.

756. Not only is a receiver unable to purchase, but he cannot even accept a lease of any part of the property committed to his charge without the sanction of the court (*f*). A receiver appointed over the estate of a reversioner is not, however, thereby incapacitated from purchasing the interest in a lease of the same lands which the reversioner has in another right (*g*).

Part V.—Liabilities.

SECT. 1.—*Losses and Improper Payments.*

Nature and duration of liability.

757. A receiver is *primâ facie* answerable for all moneys that come to his hands, or that might have come to his hands but for his own negligence or default (*h*), whether he has completed his security

(*p*) *Re Ronayne's Estate* (1863), 13 I. Ch. R. 444, 450; *Eyre* v. *M'Donnell* (1864), 15 I. Ch. R. 534.

(*q*) *White* v. *Tommy* (1836), cited in *Alven* v. *Bond* (1841), Fl. & K. 196, 224.

(*a*) *Cary* v. *Cary* (1804), 2 Sch. & Lef. 173. In *Alven* v. *Bond*, *supra*, where the money had been paid into court and the sale confirmed, the court nevertheless set aside the sale, the mortgagee-vendor not objecting, and the persons beneficially entitled undertaking to pay his demand.

(*b*) *Nugent* v. *Nugent*, [1908] 1 Ch. 546, C. A.

(*c*) *Eyre* v. *M'Donnell*, *supra*.

(*d*) *Nugent* v. *Nugent*, [1907] 2 Ch. 292, 295.

(*e*) *Cary* v. *Cary*, *supra* (where, the property being leasehold, the receiver was allowed credit for a fine he had paid on taking a renewal of the lease in his own name).

(*f*) *Meagher* v. *O'Shaughnessy*, cited in *Alven* v. *Bond*, *supra*, at p. 207; *Stannus* v. *French* (1849), 13 I. Eq. R. 161.

(*g*) *King* v. *O'Brien* (1865), 15 L. T. 23, C. A.

(*h*) —— v. *Jolland* (1802), 8 Ves. 72 (where it was suggested, but not decided, that if delay by a receiver in passing his accounts and paying his balances result in loss to the estate owing to a fall in the price of stocks, he may be held personally liable); *Hamilton* v. *Lighton* (1810), 2 Mol. 499; *Wilkins* v. *Lynch* (1823), 2 Mol. 499; *Skerretts, Minors* (1829), 2 Hog. 192; *Beytagh* v. *Concannon* (1847), 10 I. Eq. R. 351; *Re Plant, Ex parte Hayward* (1881), 45 L. T. 326, C. A.; see *Cary* v. *Cary*, *supra* (where an inquiry was directed whether any rents had been lost, and by whose default); *Wood* v. *Wood* (1828), 4 Russ. 558 (where a solicitor who

or not (*i*). Payment may be enforced even after the receiver's recognisances have been vacated, for he remains a trustee for the parties entitled and can only claim the benefit of the Statutes of Limitation, if at all, to the same extent as an ordinary trustee (*k*).

Degree of prudence required.

758. If such moneys do not reach their proper destination, the receiver will be compelled to make good the loss unless he can show that he has acted with perfect regularity and has used such a degree of prudence as would be expected from a private individual in relation to his own affairs (*l*).

Liability in respect of money paid into the bank.

If, for instance, he pays money temporarily into a bank to a separate receiver's account, he is not liable for loss occasioned by the failure of the bank (*m*); but it is otherwise if he pays it into his own general account and mixes it with his own money (*n*), or if he accepts for his own use interest on balances standing to the credit of his receivership banking account (*o*). For a receiver is remunerated for his services, and is not entitled to reap any further advantage out of the estate, such as an increase of his personal credit with a bank. If he derives any profit or advantage from his position, he must also be responsible for loss (*p*).

Remittances to unauthorised payees.

Again, if a receiver remits money to his own solicitor for payment into court he is not, as a rule, held liable for loss caused by the bankruptcy or default of the solicitor (*q*); but if he has been directed by the order of the court to pay certain named persons, he is answerable for loss occasioned by payment to any other person (*r*), whether his own solicitor (*s*), or the solicitor having the conduct of the cause (*t*), or the solicitor representing the payees, unless he can

assumed the position of receiver without authority was held liable for rents lost by his neglect).

(*i*) *Smart* v. *Flood & Co.* (1883), 49 L. T. 467.

(*k*) *Segram* v. *Tuck* (1881), 18 Ch. D. 296; *Re Gent, Gent-Davis* v. *Harris* (1888), 40 Ch. D. 190; Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8; distinguish *R.* v. *Bayly* (1841), 1 Dr. & War. 213 (where the recognisance was given to the Crown); and see title LIMITATION OF ACTIONS, Vol. XIX., p. 161.

(*l*) *Knight* v. *Plymouth (Earl)* (1747), 1 Dick. 120; *Massey* v. *Banner* (1820), 1 Jac. & W. 241, 247; *White* v. *Baugh* (1835), 3 Cl. & Fin. 44, 59, H. L.; *Shaftesbury's (Lady) Case* (1721), Prec. Ch. 558.

(*m*) See *White* v. *Baugh, supra, per* Lord LYNDHURST, at p. 66; and *Drever* v. *Maudesley* (1844), 8 Jur. 547, though in both those cases the receiver was held liable on other grounds. In the former case the question whether the mere fact of allowing an excessive balance to accumulate in a bank would disentitle the receiver to relief in case of loss was raised, but not decided.

(*n*) *Wren* v. *Kirton* (1805), 11 Ves. 377.

(*o*) *Drever* v. *Maudesley, supra.*

(*p*) *Shaw* v. *Rhodes* (1826), 2 Russ. 539; *Drever* v. *Maudesley, supra;* see *White* v. *Baugh, supra,* at p. 51; *Massey* v. *Banner* (1820), 1 Jac. & W. 241, 247.

(*q*) *Dixon* v. *Wilkinson* (1859), 4 Drew. 614, 620.

(*r*) *De Winton* v. *Brecon Corporation* (No. 2) (1860), 28 Beav. 200.

(*s*) *Ind, Coope & Co.* v. *Kidd* (1894), 63 L. J. (Q. B.) 726.

(*t*) *Gurden* v. *Badcock* (1842), 6 Beav. 157 (where the receiver paid money to the plaintiff's solicitor, who handed it to the plaintiff instead of to incumbrancers who had a prior right; but, *semble*, in such a case the receiver is entitled to reimburse himself out of moneys subsequently received by him on behalf of the plaintiff).

SECT. 1. **Losses and Improper Payments.**

show in the latter case that the solicitor had authority to receive the money and give a discharge for it (*a*).

Loss arising from parting with control, or wilful neglect.

A receiver is, of course, liable for loss occasioned by parting with the control of the property (*b*) or by wilful neglect to carry out the orders of the court (*c*) or by placing money in what he knows to be improper hands, and for any loss to which his own fraud or collusion has contributed (*d*). It is immaterial that the irregularity complained of is not in fact the immediate cause of the loss that has occurred. Thus, if a receiver enters into an improper arrangement with his sureties by which they are enabled to control the application of the moneys received and paid into a bank by him (*e*), he is answerable for loss caused by the failure of the bank.

Acts in excess of authority.

759. So also a receiver may be personally liable for acts in excess of his authority, for example, for taking possession of property not included in the assets of a testator which he has been appointed to collect; but, if his action has been acquiesced in by the beneficiaries, and they have had the benefit of it, he is entitled to an indemnity (*f*).

If the receiver, appointed in an administration action, distributes the assets without directions from the court, an inquiry may be directed whether the payments have been properly made (*g*).

Losses and expenses in carrying on business.

760. A receiver who is also acting as manager of an estate or business is not answerable for trading losses so long as he carries on the business in a usual and proper manner in accordance with the directions of the court (*h*). He is allowed in his accounts all sums properly expended in the discharge of his duty, though such expenditure may not have been directly sanctioned by the court (*i*), and is entitled to be indemnified out of assets against all liabilities properly incurred (*k*); but any expenses incurred by a receiver in open disregard of the orders of the court are disallowed, whether beneficial to the property or not (*l*).

Liability to committal and attachment.

761. A receiver who fails to pay his balances into court after

(*a*) *Delfosse* v. *Crawshay* (1834), 4 L. J. (CH.) 32; *Re Browne's Estate, Ex parte Sterling* (1886), 19 L. R. Ir. 132; see *Ind, Coope & Co.* v. *Kidd* (1894), 63 L. J. (Q. B.) 726.

(*b*) *Salway* v. *Salway* (1831), 2 Russ. & M. 215, 218; *White* v. *Baugh* (1835), 3 Cl. & Fin. 44, 57, H. L.; *Shaftesbury's (Lady) Case* (1721), Prec. Ch. 558.

(*c*) *Hicks* v. *Hicks* (1744), 3 Atk. 274; *Re Plant, Ex parte Hayward* (1881), 45 L. T. 326, C. A.; *Fetnam* v. *Kirby* (1841), 4 I. Eq. R. 320.

(*d*) *Knight* v. *Plymouth (Earl)* (1747), 1 Dick. 320; see also *Re Potter, Ex parte Day* (1883), 48 L. T. 912.

(*e*) *Salway* v. *Salway* (1831), 2 Russ. & M. 215; affirmed, *sub nom. White* v. *Baugh* (1835), 3 Cl. & Fin. 44; 9 Bli. (N. S.) 181, H. L.

(*f*) *Neate* v. *Pink* (1850), 3 Mac. & G. 476.

(*g*) *Cross* v. *Ormerod* (1801), cited in *Blunt* v. *Clitherow* (1802), 6 Ves. 799, 800; and see *Armitage* v. *Forbes* (1831), Hayes, 222, 229.

(*h*) *Morison* v. *Morison* (1855), 7 De G. M. & G. 214, C. A.

(*i*) *Securities and Properties Corporation, Ltd.* v. *Brighton Alhambra, Ltd.* (1893), 62 L. J. (CH.) 566.

(*k*) *Re Bushell, Ex parte Izard* (No. 1) (1883), 23 Ch. D. 75, 80, C. A. Not by the parties personally (*Boehm* v. *Goodall*, [1911] 1 Ch. 155); and see pp. 405 *et seq.*, *post.*

(*l*) *Garland* v. *Garland* (undated), cited in *Blunt* v. *Clitherow*, *supra*, at p. 800; see *Re Langham* (1847), 2 Ph. 299 (a lunacy case).

service of a four-day order (*m*) is liable to be imprisoned for contempt, for he is a person acting in a fiduciary capacity within the meaning of the Debtors Act, 1869 (*n*), and he is further liable to be deprived of his remuneration and to be ordered to pay interest at 5 per cent. (*o*). A receiver who fails to carry out any order for payment to a particular person of a sum of money for costs or otherwise is liable to committal (*p*).

SECT. 2.—*Rent, Rates, and Taxes.*

Liability for rent and performance of covenants.

762. Exceptionally a receiver of the rents and profits of leasehold property is bound to pay thereout in the first instance the rent due to the superior landlord (*q*), even though the order of appointment is silent on the subject, and the court has directed application of the receipts to other objects. If a receiver of leaseholds omits to keep down head-rent when he has money in hand available for the purpose, he may be called upon personally to make good the omission, though he will be entitled to an indemnity out of assets if he has acted *bonâ fide* and in accordance with the directions of the court (*r*): but the appointment of a receiver over leaseholds does not of itself constitute him an assignee of the lease or make him personally liable for payment of rent or performance of covenants (*s*), and a receiver who pays rent in his own name does not become liable as a tenant by estoppel if the landlord has not been induced thereby to believe that the lease has been assigned to him (*t*).

Liability for rates.

763. In the case of tenements of an annual value not exceeding £10 a receiver is under a statutory liability to pay water rates out of the rents received by him (*a*), but this does not constitute him the "owner" of the premises within the Water Companies (Regulation of Powers) Act, 1887 (*b*), so as to render him

(*m*) *Re Bell's Estate, Foster* v. *Bell* (1870), L. R. 9 Eq. 172.

(*n*) 32 & 33 Vict. c. 62, s. 4 (3); *Re Gent, Gent-Davis* v. *Harris* (1888), 40 Ch. D. 190; and see title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., pp. 295, 297, 298 *et seq.*

(*o*) R. S. C., Ord. 50, r. 18; *Re St. George's Estate* (1887), 19 L. R. Ir. 566; see p. 413, *post.*

(*p*) *Betagh* v. *Concanon, Hughes* v. *Concanon* (1836), L. & G. *temp.* Plunk. 355; and see title CONTEMPT OF COURT, ATTACHMENT AND COMMITTAL, Vol. VII., pp. 295, 297, 298 *et seq.*

(*q*) See p. 396, *ante.*

(*r*) *Balfe* v. *Blake* (1850), 1 I. Ch. R. 365; see *Walsh* v. *Walsh* (1839), 1 I. Eq. R. 209. In *Jacobs* v. *Van Boolen, Ex parte Roberts* (1889), 34 Sol. Jo. 97, and the earlier Irish cases, *Donovan* v. *Sweeny* (1849), 1 Ir. Jur. 165; *Elliott* v. *Elliott* (1849), 1 Ir. Jur. 165; *Sherlock* v. *Roe* (1849), 1 Ir. Jur. 177, the assets appear to have been sufficient to meet the landlord's claim, so that no question of personal liability arose. The receiver, like the tenant whose place he takes, is of course only liable for rent to the immediate landlord; see *Hand* v. *Blow*, [1901] 2 Ch. 721, C. A.; and p. 396, *ante.*

(*s*) *Hay* v. *Swedish and Norwegian Rail. Co., Ltd.* (1892), 8 T. L. R. 775.

(*t*) *Justice* v. *James* (1898), 14 T. L. R. 385; affirmed (1899), 15 T. L. R. 181, C. A. As to such estoppel, see titles ESTOPPEL, Vol. XIII., pp. 402 *et seq.*; LANDLORD AND TENANT, Vol. XVIII., p. 358.

(*a*) Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 72.

(*b*) 50 & 51 Vict. c. 21. As to his position under the Public Health Act, 1875 (38 & 39 Vict. c. 55), see p. 386, *ante.*

SECT. 2. Rent, Rates, and Taxes.

liable for arrears of water rates incurred before his appointment (*c*).

Liability for income tax.

764. A receiver, on behalf of other persons, is under statutory liability to pay income tax (*d*) in the place of such persons.

SECT. 3.—*Costs.*

Extent of personal liability.

765. The costs of all proceedings in the Supreme Court being in the discretion of the court (*e*), receivers may be and frequently are directed to bear personally the costs of unnecessary applications or appearances (*f*), or of proceedings which have been rendered necessary by their own misconduct or default (*g*); but costs which have been properly and unavoidably incurred by a receiver in the discharge of his duties are allowed him in his accounts (*h*), and a receiver appointed on behalf of debenture-holders who has, with the sanction of the court, appeared upon a successful appeal which went against the company cannot be made liable for the costs of the appeal, although the company is insolvent (*i*).

SECT. 4.—*Contracts.*

Personal liability.

766. A receiver appointed by the court, not being an agent, is *primâ facie* personally liable on all contracts entered into by him (*j*). He may of course stipulate in any particular contract that he shall not be held personally liable (*k*), or the nature of the transaction may show that he did not intend to pledge his personal credit and that the creditor did not look to it (*l*), but the mere addition of the

(*c*) *Metropolitan Water Board* v. *Brooks*, [1910] 2 K. B. 134; affirmed on other grounds, [1911] 1 K. B. 289, C. A. (where the receiver had been appointed by the parties out of court).

(*d*) See title INCOME TAX, Vol. XVI., pp. 676, 677.

(*e*) R. S. C., Ord. 65, r. 1; Judicature Act, 1890 (53 & 54 Vict. c. 44), s. 5.

(*f*) *O'Kelly* v. *Gregg* (1838), Jo. & Car. 76; *Re Doolan, a Lunatic* (1843), 2 Con. & Law. 232; *Payne* v. *Lamb* (1844), 8 I. Eq. R. 517; *De Montmorency* v. *Pratt* (1849), 12 I. Eq. R. 411; *Delacherois* v. *Wrixon* (1850), 2 Ir. Jur. 66.

(*g*) *Harrison* v. *Boydell* (1833), 6 Sim. 211; *Walsh* v. *Walsh* (1839), 1 I. Eq. R. 209; *Bertie* v. *Abingdon* (*Lord*) (1845), 8 Beav. 53; *Re Lloyd, Allen* v. *Lloyd* (1879), 12 Ch. D. 447, C. A.; *Re Suffield and Watts, Ex parte Brown* (1888), 36 W. R. 303; *Fetnam* v. *Kirby* (1841), 4 I. Eq. R. 420.

(*h*) See pp. 405, 408, *post*.

(*i*) *Re Griffiths Cycle Corporation, Ltd., Dunlop Pneumatic Tyre Co.* v. *Griffiths (John) Cycle Corporation, Ltd.* (1901), 85 L. T. 675, 776, C. A.

(*j*) *Re Flowers & Co.*, [1897] 1 Q. B. 14, C. A.; *Re Glasdir Copper Mines, Ltd., English Electro-Metallurgical Co., Ltd.* v. *Glasdir Copper Mines, Ltd.*, [1906] 1 Ch. 365, C. A., *per* VAUGHAN WILLIAMS, L.J., at p. 378; see *Re British Power Traction and Lighting Co., Ltd., Halifax Joint Stock Bank Co., Ltd.* v. *British Power Traction and Lighting Co., Ltd.*, [1910] 2 Ch. 470; *Boehm* v. *Goodall*, [1911] 1 Ch. 155; *Moss Steamship Co., Ltd.* v. *Whinney*, [1912] A. C. 254. As to the position of a receiver appointed out of court, see p. 339, *ante*. As to receivers appointed on behalf of debenture-holders, see title COMPANIES, Vol. V., pp. 373, 374, 376 *et seq.* As to receivers appointed by or on behalf of mortgagees, see title MORTGAGE, Vol. XXI., pp. 261—267.

(*k*) *Re Glasdir Copper Mines, Ltd., English Electro-Metallurgical Co., Ltd.* v. *Glasdir Copper Mines, Ltd., supra*.

(*l*) *Re Boynton (A.), Ltd., Hoffmann* v. *Boynton (A.), Ltd.*, [1910] 1 Ch. 519.

words "receiver and manager" after his signature does not suffice to displace the presumption of personal liability (*m*).

Right to indemnity.

767. The receiver, however, or any creditor of his who is entitled to be subrogated to his rights, is entitled to an indemnity against all liabilities properly incurred by him, and this indemnity ranks as a first charge upon the assets, subject only to the costs of realisation and to the receiver's costs, charges and expenses, including his remuneration (*n*); but a receiver appointed by the court, not being an agent or trustee for the parties, has no right of indemnity against them personally in case the assets controlled by the court prove insufficient (*o*).

Contracts prior to appointment.

768. Contracts entered into before the appointment of the receiver are not cancelled by the appointment, but the receiver incurs no personal liability under them, unless he expressly adopts them (*p*).

Part VI.—Remuneration and Allowances.

SECT. 1.—*Remuneration.*

SUB-SECT. 1.—*When Allowed.*

Receiver.

769. Unless it is otherwise ordered, a receiver appointed by the courts receives a proper salary or allowance (*q*).

Trustee-receiver.

A trustee who is appointed receiver is not generally entitled to remuneration (*r*), but even a trustee-receiver, unless he is expressly appointed "without salary," may be allowed remuneration if no other person equally well qualified for the position can be found or, in the case of administration actions, if the testator has authorised the payment of remuneration (*a*). The objection to remuneration does not arise in the case of a trustee who has no active duties to

(*m*) *De Grelle, Houdret & Co.* v. *Bull* (1894), 10 R. 97; *Burt, Boulton and Hayward* v. *Bull*, [1895] 1 Q. B. 276, C. A.; *Moss Steamship Co., Ltd.* v. *Whinney*, [1912] A. C. 254, 258, 259, 263; see *Justice* v. *James* (1899), 15 T. L. R. 181, C. A., *per* CHITTY, L.J., at p. 182.

(*n*) As to this, see pp. 406, 431, *post.*

(*o*) *Boehm* v. *Goodall*, [1911] 1 Ch. 155.

(*p*) *Re Newdigate Colliery Co., Ltd., Newdegate* v. *The Co.*, [1912] 1 Ch. 468, 474, 477, C. A.; *Re Thames Ironworks, Shipbuilding and Engineering Co., Ltd., Farrer* v. *The Co.* (1912), 106 L. T. 674; *Hay* v. *Swedish and Norwegian Rail. Co., Ltd.* (1892), 8 T. L. R. 775; *Parsons* v. *Sovereign Bank of Canada* (1912), 28 T. L, R. 38; and see p. 429, *post.*

(*q*) R. S. C., Ord. 50, r. 16.

(*r*) —— v. *Jolland* (1802), 8 Ves. 72; *Sykes* v. *Hastings* (1805), 11 Ves. 363; *Pilkington* v. *Baker, British Mutual Investment Co.* v. *Pilkington* (1876), 24 W. R. 234. The relation of trustee and *cestui que trust* excludes any idea of remuneration except by express antecedent contract (*Re Accles, Ltd., Hodgson* v. *Accles, Ltd.*, [1902] W. N. 164; see *Marshall* v. *Holloway* (1820), 2 Swan. 432, 453; *Re Freeman's Settlement Trusts* (1887), 37 Ch. D. 148; and title TRUSTS AND TRUSTEES).

(*a*) *Sykes* v. *Hastings, supra*; *Newport* v. *Bury* (1857), 23 Beav. 30; *Re Bignell, Bignell* v. *Chapman*, [1892] 1 Ch. 59, C. A.; *Morison* v. *Morison* (1838), 4 My. & Cr. 215 (consignee of West Indian estate).

SECT. 1. **Remuneration.**

perform involving the receipt of money, such as a trustee to preserve contingent remainders (*b*).

Mortgagee-receiver. Interested party.

A legal mortgagee in possession who is himself appointed receiver is not allowed remuneration (*c*), though in a proper case it is conceived that he might be allowed the costs of employing an agent for collection of rents (*d*); and, generally, where a party interested is appointed receiver, he is not allowed a salary (*e*), unless by consent (*f*).

Small estate.

Where the property to be received is of small amount and involves no difficulty in collection, the court has sometimes refused to allow remuneration (*g*).

SUB-SECT. 2.—*How Calculated and Paid.*

When determined.

770. The nature and amount of the remuneration is usually determined in chambers when the receiver passes his accounts, for a receiver is not entitled to any remuneration until he has accounted for all his payments and receipts (*h*). Occasionally, however, the remuneration is fixed by the taxing master on taxation of costs, if the order for taxation so directs (*i*).

How calculated.

771. A receiver of annual rents and profits or the receiver and manager of a business is generally paid by a commission on the gross amount of his receipts, the rate varying from about 2 to 5 per cent. in proportion to the care and trouble involved (*k*). In other cases a fixed salary is allowed, which may or may not include an allowance for out-of-pocket expenses (*l*). A receiver of capital sums, as for instance a receiver appointed to get in the personal estate of a deceased person, is often paid by a lump sum, the amount of which depends on the degree of difficulty experienced in getting in the property (*m*).

Extra remuneration.

772. If a receiver, without applying to the court for directions, voluntarily incurs extraordinary trouble and expense beyond what

(*b*) *Sutton* v. *Jones*, *Jones* v. *Sutton* (1809), 15 Ves. 584.

(*c*) *Re Prytherch*, *Prytherch* v. *Williams* (1889), 42 Ch. D. 590, 601.

(*d*) *Bonithon* v. *Hockmore* (1685), 1 Vern. 316; *Davis* v. *Dendy* (1818), 3 Madd. 170; *Gilbert* v. *Dyneley* (1841), 3 Scott (N. R.), 364; see *Chambers* v. *Goldwin* (1804), 9 Ves. 254, 271; *Langstaffe* v. *Fenwick*, *Fenwick* v. *Langstaffe* (1805), 10 Ves. 405; *Sayers* v. *Whitfield* (1829), 1 Knapp, 133, 142, P. C.

(*e*) *A.-G.* v. *Gee* (1813), 2 Ves. & B. 208; *Wilson* v. *Greenwood* (1818), 1 Swan. 471; *Gardner* v. *Blane* (1842), 1 Hare, 381; *Blakeney* v. *Dufaur* (1851), 15 Beav. 40; *Hoffman* v. *Duncan* (1853), 18 Jur. 69; *Rawson* v. *Rawson* (1865), 11 L. T. 595; *Cookes* v. *Cookes* (1865), 2 De G. J. & Sm. 526, C. A.; *Sargant* v. *Read* (1876), 1 Ch. D. 600; *Hyde* v. *Warden* (1876), 1 Ex. D. 309, C. A.; *Beamish* v. *Stephenson* (1886), 18 L. R. Ir. 319; *Re Golding* (1888), 21 L. R. Ir. 194; *Taylor* v. *Neate* (1888), 39 Ch. D. 538.

(*f*) *Fingal* (*Earl*) v. *Blake* (1829), 2 Mol. 50; *Davy* v. *Scarth*, [1906] 1 Ch. 55.

(*g*) *Marr* v. *Littlewood* (1837), 2 My. & Cr. 454, 458.

(*h*) *Re Ward*, *Simmons* v. *Rose*, *Weeks* v. *Ward* (1862), 31 Beav. 1.

(*i*) *Silkstone and Haigh Moor Coal Co.* v. *Edey*, [1901] 2 Ch. 652, C. A.

(*k*) *Day* v. *Croft* (1840), 2 Beav. 488; *Prior* v. *Bagster* (1887), 57 L. T. 760.

(*l*) *Re Bignell*, *Bignell* v. *Chapman*, [1892] 1 Ch. 59, C. A.

(*m*) *Potts* v. *Leighton* (1808), 15 Ves. 273.

his duty as receiver requires, he may be allowed remuneration in addition to his salary or commission (*n*), provided the extra services were properly undertaken for the benefit of the estate (*o*).

Reduction of quantum.

773. Where the remuneration of a receiver is paid by a poundage or commission on receipts, the quantum is sometimes reduced by allowing capital sums to be paid directly into court instead of passing through the receiver's hands (*p*).

Loss of right.

774. A receiver is liable to be deprived of his remuneration if he fails to pass his accounts or pay over his balances according to order (*q*).

Liability of tenant for life.

775. As between tenant for life and remainderman, the remuneration of a receiver of income and the expenses of passing his accounts are chargeable against income, not capital (*r*).

SECT. 2.—*Allowance of Costs, Charges, and Expenses.*

SUB-SECT. 1.—*In General.*

General rule as to allowance and right to indemnity.

776. A receiver is entitled to be allowed all costs, charges and expenses and to be indemnified against all liabilities properly incurred in the protection and preservation of the property committed to his charge, or otherwise in the course of his duties, even though they result in loss (*s*), and the right to indemnity is not lost by the termination of his office (*t*); but if he suffers any costs to accrue which ought to have been prevented he is liable to pay them out of his own pocket (*u*).

(*n*) *Potts* v. *Leighton* (1808), 15 Ves. 273; see *Re Catlin* (1854), 18 Beav. 508, 511 (where it was said that a receiver would not be allowed to make an extra charge for drawing up a scheme of the property and the holding of the tenants, this being work within the ordinary scope of his duties as receiver).

(*o*) *Malcolm* v. *O'Callaghan* (1837), 3 My. & Cr. 52; *Harris* v. *Sleep*, [1897] 2 Ch. 80, C. A. (wages for personal labour), distinguishing *Re Ormsby, a Minor* (1809), 1 Ball & B. 189 (where a proposed fee of thirty guineas to the receiver, beyond and in addition to his out-of-pocket expenses, for his trouble in personally attending a survey, was disallowed, personal attendance being apparently unnecessary).

(*p*) *Ex parte Cranmer* (1808), 1 Russ. 477, n.; *Haigh* v. *Grattan* (1839), 1 Beav. 201; *Weale* v. *Ireland* (1841), 5 Jur. 405; *Gardner* v. *London, Chatham and Dover Rail. Co.* (No. 1), *Drawbridge* v. *Same, Gardner* v. *Same* (No. 2), *Imperial Mercantile Credit Association* v. *Same* (1867), 2 Ch. App. 201, 219; compare *Re Starkie, Ex parte Clayton* (1826), 1 Russ. 476 (a lunacy case).

(*q*) *Bristowe* v. *Needham* (1863), 11 W. R. 926; R. S. C., Ord. 50, r. 18; *Re St. George's Estate* (1887), 19 L. R. Ir. 566.

(*r*) *Shore* v. *Shore* (1859), 4 Drew. 501.

(*s*) *Morison* v. *Morison* (1855), 7 De G. M. & G. 214, C. A.; *Re Gomersall, Ex parte Gordon* (1875), L. R. 20 Eq. 291; *Re Bushell, Ex parte Izard* (No. 1) (1883), 23 Ch. D. 75, 80, C. A.; *Re Brooke, Brooke* v. *Brooke*, [1894] 2 Ch. 600; *Re Graham, Graham* v. *Noakes*, [1895] 1 Ch. 66 (fire insurance premiums); and, as to repairs, see *Blunt* v. *Clitherow* (1802), 6 Ves. 799; *A.-G.* v. *Vigor* (1805), 11 Ves. 563; *Re Graham, Graham* v. *Noakes, supra*.

(*t*) *Levy* v. *Davis*, [1900] W. N. 174.

(*u*) *Cook* v. *Sharman* (1844), 8 I. Eq. R. 515; *Woodroffe* v. *Greene* (1852), 2 I. Ch. R. 330 (unnecessary employment of a solicitor).

SECT. 2. SUB-SECT. 2.—*Disbursements.*

Allowance of Costs, Charges, and Expenses.

Expenses of carrying on business.

777. A receiver who is also appointed manager of a business is allowed all the necessary expenses of carrying on the business with a view to advantageous sale, such as wages and salaries to workmen and servants (*a*); but the right to repayment is limited to the assets controlled by the court; if these prove insufficient, the receiver can have no claim against the parties personally in the absence of express contract (*b*). In the case of large business concerns, the order of appointment often authorises the engagement, at a salary, of sub-managers and agents for various purposes (*c*).

The consignee of a West Indian estate (*d*), whose duty it is to send out, often at considerable expense, the machinery and supplies necessary for the proper cultivation of the estate, is entitled to have the balances found due to him on taking his accounts reimbursed, in the first place, out of income, and, if necessary, out of *corpus*, as being in the nature of salvage expenditure (*e*).

Effect of default of receiver.

778. A receiver who has been directed by the court to pay moneys coming to his hands to one person will not be allowed payments to any other person unless they have been made by leave of the court (*f*).

A receiver may be ordered to pay the costs of any application to the court rendered necessary by his own default (*g*); but it would appear that if a receiver who has been guilty of default can show that he acted at the instance of parties interested in the property, he may be allowed to charge such parties in account with any costs that have been thrown on him personally in consequence of such default (*h*).

Loss of right of objection to allowances.

779. Plaintiffs who are parties to orders authorising a receiver to do various acts as receiver are estopped from objecting afterwards to the allowance of his costs in respect of them (*i*).

Applications to the court in respect of disbursements.

780. Application to the court should not be made in respect of disbursements which will certainly be allowed to the receiver in passing

(*a*) *Re Gomersall, Ex parte Gordon* (1875), L. R. 20 Eq. 291.

(*b*) *Boehm* v. *Goodall*, [1911] 1 Ch. 155.

(*c*) 1 Seton, Judgments and Orders, 7th ed., pp. 731, 732.

(*d*) The Rules of the Supreme Court relating to receivers apply also to consignees and managers appointed by the court; see R. S. C., Ord. 71, r. 1.

(*e*) *Farquharson* v. *Balfour* (1836), 8 Sim. 210; *Shaw* v. *Simpson* (1842), 1 Y. & C. Ch. Cas. 732; *Re Tharp* (1852), 2 Sm. & G. 578; and see title LIEN, Vol. XIX., p. 22.

(*f*) *De Winton* v. *Brecon Corporation* (No. 2) (1860), 28 Beav. 200 (where a receiver appointed by the Court of Chancery had submitted to and acted upon a garnishee order made against him in the Court of Exchequer).

(*g*) *Walsh* v. *Walsh* (1839), 1 I. Eq. R. 209; *Saunderson* v. *Stoney* (1839), 2 I. Eq. R. 153; *Bertie* v. *Abingdon* (*Lord*) (1845), 8 Beav. 53; *Re St. George's Estate* (1887), 19 L. R. Ir. 566; *Re Suffield and Watts, Ex parte Brown* (1888), 36 W. R. 303.

(*h*) *Bertie* v. *Abingdon* (*Lord*), *supra*, at p. 60.

(*i*) *Taylor* v. *Taylor* (1881), 6 P. D. 29.

his accounts, and the receiver may be ordered to pay the costs of any unnecessary application of the kind (*k*); but the sanction of the court should be obtained beforehand for any expenditure or liability the propriety of which may be in doubt; for unless this is done the receiver runs the risk of having such expenses disallowed and an indemnity against such liabilities refused (*l*).

Inquiry.

An inquiry will, if necessary, be directed whether unauthorised expenditure has been for the benefit of the property or parties interested (*m*), and expenditure which in the result proves beneficial is, as a rule, allowed (*n*).

SUB-SECT. 3.—*Costs of Proceedings.*

Costs of accounts.

781. A receiver is entitled to the costs of and incidental to the passing of his accounts, unless he is in default and has accounted only under stress of an order for attachment (*o*), and, if no objection is taken at the time to want of punctuality in accounting, such costs are not afterwards disallowed unless in very special circumstances (*p*).

Costs of completing security.

He is not, however, allowed the expenses of finding security or the premiums payable to a guarantee society, unless he is acting without salary (*q*). If he fails to complete his security he must, as a rule, bear personally the costs of the proceedings necessary to set aside his appointment and obtain the appointment of a substitute (*r*).

Costs of application for discharge or removal.

782. A receiver who applies for his own discharge is not allowed the costs of the application (*s*) unless there is very good reason for it (*a*), nor is he allowed the costs incidental to his own removal and the appointment of a new receiver, unless by consent or after unusually long and faithful service (*b*). Where the application for discharge is made by the parties to the action in the usual way, the

(*k*) *Fitzgerald* v. *Fitzgerald* (1843), 5 I. Eq. R. 525; *Newtown* v. *Obre* (1837), Sau. & Sc. 137.

(*l*) *Malcolm* v. *O'Callaghan* (1837), 3 My. & Cr. 52; *Re British Power Traction and Lighting Co., Ltd., Halifax Joint Stock Banking Co., Ltd.* v. *British Power Traction and Lighting Co., Ltd.*, [1906] 1 Ch. 497; *Re British Power Traction and Lighting Co., Ltd., Halifax Joint Stock Banking Co., Ltd.* v. *British Power Traction and Lighting Co., Ltd.* (No. 2), [1907] 1 Ch. 528.

(*m*) *Blunt* v. *Clitherow* (1802), 6 Ves. 799; *A.-G.* v. *Vigor* (1805), 11 Ves. 563; *Tempest* v. *Ord* (1816), 2 Mer. 55; compare *Swaby* v. *Dickon* (1833), 5 Sim. 629.

(*n*) *Bristowe* v. *Needham* (1847), 2 Ph. 190; *Malcolm* v. *O'Callaghan*, *supra*.

(*o*) *Trapaud* v. *Cormick* (1825), 1 Hog. 245; and see pp. 412 *et seq.*, *post*.

(*p*) *Ward* v. *Swift* (1848), 8 Hare, 139.

(*q*) *Harris* v. *Sleep*, [1897] 2 Ch. 80, C. A.; and see p. 373, *ante*.

(*r*) *Hunter* v. *Pring* (1845), 8 I. Eq. R. 102 (where in exceptional circumstances the receiver was excused on the ground of poverty and ignorance); *Lane* v. *Townsend* (1852), 2 I. Ch. R. 120 (where the receiver was also excused in special circumstances).

(*s*) *Cox* v. *M'Namara* (1847), 11 I. Eq. R. 356; *Stilwell* v. *Mellersh* (1851), 20 L. J. (CH.) 356, 361.

(*a*) *Richardson* v. *Ward* (1822), Madd. & G. 266 (where retirement was rendered necessary by failing eyesight and memory).

(*b*) *Cox* v. *M'Namara*, *supra*.

SECT. 2. Allowance of Costs, Charges, and Expenses.

receiver, being a mere officer of the court, should not appear, though served with notice of the application, and if he does appear his costs will be disallowed (*c*). Where the application is rendered necessary by the wilful default of the receiver himself, he may be ordered to pay the costs of the application, of his own discharge, and of the appointment of a successor (*d*).

Costs of proceedings by leave.

783. A receiver is allowed his costs of any action brought by direction of the court, even though it is dismissed with costs; and, if the assets prove insufficient to pay the costs of the successful defendant as well as those of the receiver, priority will be given to the receiver's claim (*e*).

Costs of proceedings without leave.

The costs of initiating or defending legal proceedings without the leave of the court are not, as a rule, allowed (*f*); but if the defence of an action is undertaken in the interests of and for the protection of the estate and proves successful, the receiver is entitled to be indemnified against his costs, notwithstanding that he acted without the leave of the court (*g*). If proceedings initiated by a receiver have to be abandoned owing to an error in the form of procedure the costs are disallowed (*h*), and so also are the costs of an application by a receiver for leave to commence proceedings on behalf of the plaintiff against one of the defendants to an action, such proceedings being outside the scope of his duties as receiver (*i*).

Applications to the court.

784. Application to the court should be made by the parties to the action and not by the receiver personally, and the costs of any application by the receiver in his own name may be disallowed unless he shows that the parties have refused or neglected to act (*k*), especially if the application is made in the interests of one party against another in a disputed question of right (*l*).

SECT. 3.—*Payment.*

Priority.

785. A receiver is entitled to be paid his remuneration, costs, and expenses out of the property, notwithstanding that it may be insufficient to meet all claims upon it. Such payment is postponed to the costs of realisation (*m*) and to any overriding charges outside

(*c*) *Herman* v. *Dunbar* (1857), 23 Beav. 312; *Lane* v. *Townsend* (1852), 2 I. Ch. R. 120.

(*d*) *Re St. George's Estate* (1887), 19 L. R. Ir. 566.

(*e*) *Ramsay* v. *Simpson*, [1899] 1 I. R. 194, C. A.

(*f*) *Swaby* v. *Dickon* (1833), 5 Sim. 629; *Re Dunn, Brinklow* v. *Singleton*, [1904] 1 Ch. 648; *Conyers* v. *Crosbie* (1844), 6 I. Eq. R. 657.

(*g*) *Courand* v. *Hanmer* (1846), 9 Beav. 3; *Bristowe* v. *Needham* (1847), 2 Ph. 190; see *Re Dunn, Brinklow* v. *Singleton, supra.*

(*h*) *Re Montgomery* (1828), 1 Mol. 419 (an Irish lunacy case).

(*i*) *Comyn* v. *Smith* (1823), 1 Hog. 81; see *Murtin* v. *Walker's Executors* (1837), Sau. & Sc. 139.

(*k*) *Re Sacker, Ex parte Sacker* (1888), 22 Q. B. D. 179, C. A., *per* FRY, L.J., at p. 185; *Ireland* v. *Eade* (1844), 7 Beav. 55; see *Parker* v. *Dunn* (1845), 8 Beav. 497; *Stilwell* v. *Mellersh* (1851), 20 L. J. (CH.) 356, 361 (where the costs of a petition by the receiver for his discharge, coming on with the plaintiff's summons for further directions in the action, were disallowed).

(*l*) *Comyn* v. *Smith, supra.*

(*m*) Costs of realisation do not include costs of preservation (*Re Oriental*

the action, but takes priority over all other claims, including costs of action of the parties thereto (*n*).

When postponed to creditors' right of indemnity.

786. It may be that the receiver's remuneration would be postponed to any right of indemnity to which creditors of the receiver, who had no notice of the existence of the receivership, might be entitled by way of subrogation (*o*). If, however, such creditors have relied upon a charge, even though expressed to be a first charge, and not upon the personal liability of the receiver (*p*), or if they are themselves parties to the action and have had the benefit of the receiver's expenditure (*q*), or if they have had notice of the receivership and of the purpose for which the credit is required (*r*), their claims will be postponed to the receiver's claim for remuneration.

Receiver of rents subject to prior incumbrancers.

787. A receiver of the rents of realty subject to the rights of prior incumbrancers is entitled to retain his remuneration, costs, and expenses out of rents received by him prior to the date at which his possession is displaced by that of a prior incumbrancer (*s*).

Costs out of funds in court.

788. Though a receiver is not entitled to his costs, charges and expenses until he passes his accounts, yet the costs of legal proceedings taken by order of the court may be ordered to be paid to his solicitor out of funds in court, even though the receiver be in default (*t*).

Part VII.—Accounts.

SECT. 1.—*Form.*

Account of all moneys.

789. A receiver is bound to account for all moneys received by him, whether he has given security to do so or not (*u*).

Hotels Co., Perry v. *Oriental Hotels Co.* (1871), L. R. 12 Eq. 126; *Lathom* v. *Greenwich Ferry Co.* (1895), 72 L. T. 790; *Re New Zealand Midland Rail. Co., Smith* v. *Lubbock*, [1901] 2 Ch. 357).

(*n*) *Re Johnson, Ex parte Royle* (1875), L. R. 20 Eq. 780; *Batten* v. *Wedgwood Coal and Iron Co.* (1884), 28 Ch. D. 317; *Strapp* v. *Bull, Sons & Co., Shaw* v. *London School Board*, [1895] 2 Ch. 1, C. A.; *Re Glasdir Copper Mines, Ltd., English Electro-Metallurgical Co., Ltd.* v. *Glasdir Copper Mines, Ltd.*, [1906] 1 Ch. 365, C. A.; *Re London United Breweries, Ltd., Smith* v. *London United Breweries, Ltd.*, [1907] 2 Ch. 511; *Re Boynton (A.), Ltd., Hoffman* v. *Boynton (A.), Ltd.*, [1910] 1 Ch. 519; and see *Davy* v. *Scarth*, [1906] 1 Ch. 55 (where a partner who had been appointed receiver was allowed to retain his remuneration and costs out of assets collected by him, notwithstanding that he was largely indebted to the firm).

(*o*) See *Strapp* v. *Bull, Sons & Co., Shaw* v. *London School Board, supra.*

(*p*) *Re Boynton (A.), Ltd., Hoffmann* v. *Boynton (A.), Ltd., supra.*

(*q*) *Strapp* v. *Bull, Sons & Co., Shaw* v. *London School Board, supra; Re Glasdir Copper Mines, Ltd., English Electro-Metallurgical Co., Ltd.* v. *Glasdir Copper Mines, Ltd., supra.*

(*r*) *Re New Zealand Midland Rail. Co., Smith* v. *Lubbock, supra;* see *Morrison* v. *Morrison* (1854), 2 Sm. & G. 564; (1855), 7 De G. M. & G. 214, C. A.

(*s*) *Davy* v. *Price*, [1883] W. N. 226.

(*t*) *M'Bride* v. *Clarke* (1839), 1 I. Eq. R. 203.

(*u*) R. S. C., Ord. 50, r. 16; *Smart* v. *Flood & Co.* (1883), 49 L. T. 467.

SECT. 1. Form.

Form.

The parties interested are entitled to have the accounts made out in such a way as to show the balance actually in the hands of the receiver at a given date, and if the accounts are not so made out the receiver may be ordered personally to pay the costs of any proceedings rendered necessary to ascertain the balance due from him (*v*).

SECT. 2.—*Verification and Delivery.*

Date for leaving accounts at chambers.

790. The court or judge fixes the days on which the accounts are to be left at chambers (*w*), and also the days on which the balances are to be paid (*x*). The intervals at which accounts are directed to be left vary with the nature of the property or business over which the receiver is appointed, but do not generally exceed a year (*a*).

Extension of time for delivery.

A receiver may in a proper case obtain an extension of time within which to deliver his accounts, and, on the other hand, in case of undue delay on his part, the plaintiff or other parties interested may obtain an order for delivery of accounts within four days and payment by the receiver of the costs of the application (*b*).

Affidavit verifying accounts.

791. The accounts must be accompanied by an affidavit of the receiver exhibiting and verifying them (*c*). Any payments not verified are disallowed (*d*). Where the security given by the receiver is the bond of a guarantee society, the last paragraph of the model affidavit should be varied by stating that the society is still carrying on business and that no petition is pending for its winding up (*e*).

Copy accounts for plaintiff.

792. A copy of the accounts, together with notice that they have been left at chambers, should at once be given to the plaintiff or other person having the conduct of the cause (*f*), who thereupon obtains an appointment for the purpose of passing them (*g*).

(*v*) *Bertie* v. *Abingdon* (*Lord*) (1845), 8 Beav. 53. The accounts should be in the prescribed form, with such variations as circumstances may require (R. S. C., Ord. 50, r. 19; Appendix L, No. 14). They should be written upon foolscap paper, bookwise (*ibid.*, Ord. 66, r. 2). Separate accounts of real and personal estate should be made out, and the items of receipts and payments numbered consecutively in each case (*ibid.*, Ord. 33, r. 4). A summary should be appended showing the balance due from the receiver on each account after making allowance for his costs when taxed. For form of account by receiver appointed out of court, compare Encyclopædia of Forms and Precedents, Vol. I., p. 154.

(*w*) The order may direct the accounts to be taken in the office of any district registrar (Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 66).

(*x*) R. S. C., Ord. 50, r. 18.

(*a*) The costs of the receiver, including the costs of completing his appointment, are taxed on the passing of his accounts.

(*b*) Daniell's Chancery Forms, 5th ed., p. 883; *Scott* v. *Platel* (1847), 2 Ph. 229.

(*c*) The affidavit should be in the prescribed form, with such variations as circumstances may require; see R. S. C., Ord. 33, r. 4; Ord. 50, r. 20; Appendix L, No. 22.

(*d*) 1 Seton, Judgments and Orders, 6th ed., p. 808.

(*e*) Daniell's Chancery Forms, 5th ed., p. 878.

(*f*) The cost of the copy supplied to the plaintiff is not allowed in the receiver's accounts if the same solicitor acts for both parties (*Sharp* v. *Wright* (1866), L. R. 1 Eq. 634).

(*g*) R. S. C., Ord. 50, r. 20.

SECT. 2. Verification and Delivery.

793. Accounts are not taken in a district registry, though the action has been proceeding there, unless the order of appointment so directs (*h*), but this does not apply to the district registries of Manchester and Liverpool (*i*).

Proceedings in district registry.

SECT. 3.—*Passing.*

Vouching and passing.

794. At the appointed time the accounts are vouched and passed in chambers in the usual way (*k*), or the court may direct that only such items as may be contested or surcharged shall be brought before the judge in chambers (*l*).

Master's certificate.

A certificate of the master stating the result of a receiver's account may be obtained from time to time (*m*) on application by summons in chambers. The master's certificate, when filed, is binding on all parties, unless discharged or varied upon application by summons, which must be made within two days (*n*). Only in special circumstances are receivers' accounts reviewed at a later date (*o*).

Attendance of parties in chambers.

795. All parties interested in the property over which the receiver is appointed are entitled to attend the passing of the receiver's accounts (*p*), but they attend at their own expense, unless they have been directed by the judge to attend (*q*), or have obtained special leave to attend at the expense of the estate (*r*). If the judge decides that their attendance has been necessary, their costs are made costs in the cause: they will not be included in the receiver's accounts unless an order as to payment of costs of the action has been made, which would justify their inclusion (*s*).

Attendance of parties in administration actions.

In administration actions, parties other than the party having the conduct of the cause and the executor or administrator representing the estate are not usually allowed their costs of attending proceedings in chambers (*t*). The fact that they have obtained the leave of

(*h*) *Walker* v. *Robinson* (1876), 34 L. T. 229; *Re Smith, deceased, Hutchinson* v. *Ward* (1877), 6 Ch. D. 692; *Re Capper, Robertson* v. *Capper* (1878), 26 W. R. 434; *Re Bowen, Bennett* v. *Bowen* (1882), 20 Ch. D. 538; but see now R. S. C., Ord. 35, r. 6; and see note (*w*), p. 410, *ante*.

(*i*) See Yearly Practice of the Supreme Court, 1913, p. 464.

(*k*) Daniell's Chancery Practice, 7th ed., Vol. I., pp. 848 *et seq.* For the practice in the King's Bench Division, see Central Office Regulations (K. B. D.) Reg. 4; see also title PRACTICE AND PROCEDURE, Vol. XXIII., p. 138, note (*a*).

(*l*) R. S. C., Ord. 33, r. 4 a.

(*m*) *Ibid.*, Ord. 50, r. 22.

(*n*) *Ibid.*, Ord. 55, r. 70.

(*o*) *Ibid.*, r. 71; *Wildridge* v. *M'Kane* (1827), 2 Mol. 545 (application of ward of court on attaining majority); *M'Can* v. *O'Ferrall* (1841), 8 Cl. & Fin. 30, H. L.

(*p*) *Day* v. *Croft* (1851), 14 Beav. 29; *Sharp* v. *Lush* (1879), 10 Ch. D. 468; R. S. C., Ord. 16, r. 41.

(*q*) *Ibid.*, Ord. 55, r. 40.

(*r*) *Ibid.*, rr. 42, 43.

(*s*) Daniell's Chancery Practice, 7th ed., Vol. II., p. 1447.

(*t*) *Re Taylor's Estate, Daubney* v. *Leake* (1866), L. R. 1 Eq. 495; *Hubbard* v. *Latham* (1866), 35 L. J. (CH.) 402; *Wragg* v. *Morley* (1866), 14 W. R. 949; *Armstrong* v. *Armstrong* (1871), L. R. 12 Eq. 614; *Joseph* v. *Goode* (1875), 23 W. R. 225; *Seagram* v. *Tuck* (1881), 18 Ch. D. 296; and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., pp. 349, 350.

SECT. 3. **Passing.**

the court to attend does not entitle them to their costs unless the order so directs (*u*).

Passing of accounts in foreclosure actions.

796. In foreclosure actions the passing of the receiver's accounts may be postponed till after foreclosure absolute if the destination of balances in his hands has been already determined (*v*), or if the amount received is not sufficient to cover his out-of-pocket expenses and remuneration (*a*), but not otherwise, in the absence of special circumstances (*b*).

SECT. 4.—*Payment of Balances.*

Payment into court on certificate.

797. Any direction for payment of balances into court may be attached to the certificate in the form of a lodgment schedule signed by the master, which operates in the same manner as a lodgment schedule attached to an order (*c*). On receipt of a copy of such a lodgment schedule the Paymaster-General issues a direction for lodgment in court (*d*).

Payment into court on request.

798. A receiver may, however, at any time pay moneys or securities in his hands into court on a mere request to the Paymaster-General without waiting for the direction of a master (*e*), and it is his duty to do so if they are of such an amount as to make it worth while to invest them, for he is not entitled to make use of balances in his hands for his own benefit (*f*), or to retain them in an unproductive state until an order is obtained for investment (*g*). Payments into court should be made in London under the Supreme Court Funds Rules, 1905, even though the action has been proceeding in a district registry (*h*).

Order for payment after dismissal of action.

799. An order may be made on a receiver to pass his accounts and pay over the balances notwithstanding that the action in which he was appointed has been dismissed (*i*); and even after a receiver has been discharged his accounts may be investigated and surcharged (*k*).

SECT. 5.—*Default.*

Penalties for default.

800. A receiver who fails to pass his accounts or pay over his balances according to order may be required to attend at chambers to

(*u*) *Day* v. *Batty* (1882), 21 Ch. D. 830.
(*v*) *Coleman* v. *Llewellin* (1886), 34 Ch. D. 143, C. A.
(*a*) *Ellenor* v. *Ugle*, [1895] W. N. 161.
(*b*) *Jenner-Fust* v. *Needham* (1886), 32 Ch. D. 582, C. A.; *Cheston* v. *Wells*, [1893] 2 Ch. 151; and see, further, title MORTGAGE, Vol. XXI., pp. 298, 299.
(*c*) Supreme Court Funds Rules, 1905, r. 5; see Yearly Practice of the Supreme Court, 1913, pp. 1650 *et seq.*
(*d*) *Ibid.*, r. 30.
(*e*) *Ibid.*, paragraphs 4 *et seq.*; Forms 8 and 9.
(*f*) *Shaw* v. *Rhodes* (1826), 2 Russ. 539.
(*g*) *Potts* v. *Leighton* (1808), 15 Ves. 273, 274; *Harman* v. *Forster* (1825), 1 Hog. 318.
(*h*) *Finlay* v. *Davis* (1879), 12 Ch. D. 735.
(*i*) *Pitt* v. *Bonner* (1833), 5 Sim. 577; *Hutton* v. *Beeton and M'Murray*, *Beeton* v. *M'Murray and Hutton* (1863), 9 Jur. (N. S.) 1339.
(*k*) *Harrison* v. *Boydell* (1833), 6 Sim. 211; *Re Edwards, Minors* (1892), 31 L. R. Ir. 242; *Ingham* v. *Sutherland* (1890), 63 L. T. 614.

SECT. 5. Default.

explain his omission, and thereupon such directions as are proper may be given at chambers or by adjournment into court, including the discharge of the receiver and the appointment of another, and payment of costs (*l*); or, if the receiver is not discharged, his remuneration may be disallowed in taking his subsequent accounts, and he may also, if the judge thinks fit, be charged with interest at 5 per cent. on the balances retained in his hands (*m*), whether they have been actually certified or not (*n*), though the laches of the parties may be a ground for not charging the receiver with interest (*o*).

When penalties may be enforced.

These penalties may be enforced even after the receiver has been discharged, if he fails to pay the final balance found due from him (*p*); but accounts passed will not be reopened for the purpose of charging a receiver with interest or disallowing his remuneration unless the application is made promptly (*q*), nor will a receiver be deprived of his remuneration if his delay in accounting has been solely for the convenience and at the request of the parties (*r*).

Liability as trustee.

801. A receiver who, either through mistake or fraud, omits to bring into account moneys received by him is a trustee for the persons entitled and liable to them, though his accounts have been passed and his recognisances vacated (*s*), unless he is entitled to the protection of any Statute of Limitation (*t*).

Effect of failure to comply with summary order.

802. If a receiver fails to comply with a summary order for payment of a balance into court, his recognisance may be ordered to be put in suit against him (*a*). He is also liable to committal

(*l*) R. S. C., Ord. 50, r. 21. Where a receiver had been ordered to pay his balances direct to the persons entitled and had made default in doing so, it was held that a four-day order and not a writ of *fi. fa.* was the proper process to compel payment (*Whitehead* v. *Lynes* (1865), 34 Beav. 161).

(*m*) R. S. C., Ord. 50, r. 18; see *Foster* v. *Foster* (1789), 2 Bro. C. C. 616; *Fletcher* v. *Dodd* (1789), 1 Ves. 85; —— v. *Jolland* (1802), 8 Ves. 72; *White* v. *Lincoln* (*Lady*), *Newcastle* (*Duke*) v. *Kinderley* (1803), 8 Ves. 363, *per* Lord ELDON, L.C., at p. 371; *Potts* v. *Leighton* (1808), 15 Ves. 273; *Dawson* v. *Raynes* (1826), 2 Russ. 466; *Re Ward, Simmons* v. *Rose, Weeks* v. *Ward* (1862), 31 Beav. 1.

(*n*) *Bristowe* v. *Needham* (1863), 11 W. R. 926.

(*o*) *Dawson* v. *Raynes, supra*; *Gurden* v. *Badcock* (1842), 6 Beav. 157.

(*p*) *Harrison* v. *Boydell* (1833), 6 Sim. 211.

(*q*) *Ward* v. *Swift* (1848), 8 Hare, 139.

(*r*) *Purcell* v. *Woodley* (1847), 10 I. Eq. R. 422; *Flood* v. *Aldborough* (*Lord*) (1845), 8 I. Eq. R. 103; distinguish *Dease* v. *Reilly* (1853), 2 Con. & Law. 441 (where some of the parties were minors).

(*s*) *Seagram* v. *Tuck* (1881), 18 Ch. D. 296; *M'Can* v. *O'Ferrall* (1841), 8 Cl. & Fin. 30, H. L.

(*t*) See the Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8. If no recognisance is in existence the Limitation Act, 1623 (21 Jac. 1, c. 16), will be applicable, as to a simple contract debt (*Du Pre* v. *Duncombe* (1845), 9 Jur. 770), but during the continuance of his recognisance money due from a receiver, whether an ascertained balance or not, is a debt of record within the Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42), s. 3 (*Re Ward, Simmons* v. *Rose, Weeks* v. *Ward supra*; *Seagram* v. *Tuck, supra*). As to the time limit in each case, see title LIMITATION OF ACTIONS, Vol. XIX., pp. 37, 161.

(*a*) *Thurlow* v. *Thurlow* (1840), 4 Jur. 982. The proceedings are by writ of *scire facias* in the name of the cognisees to the recognisance; see 1 Seton, Judgments and Orders, 7th ed., p. 772; Daniell's Chancery Practice, 7th ed., Vol. II., p. 1451; *R.* v. *Bayly* (1841), 1 Dr. & War. 213; title

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or attachment or to sequestration, and to pay the costs of any application made to the court for the purpose (*b*).

Liability of sureties of receiver.

803. If a receiver absconds or dies after having made default in passing his accounts and paying the balances into court, his recognisance may at once be put in suit against his sureties though the amount due from him has not yet been ascertained; for the receiver's default involves a forfeiture of his recognisance and creates an immediate debt to the masters of the Supreme Court to whom it is given (*c*).

Liability of executors of receiver.

An order cannot, however, be made on the executors of a deceased receiver to bring in and pass his accounts and to pay the balance found due out of his assets (*d*), unless by consent (*e*) or on their own application (*f*). They are not parties to the suit, and if they are unwilling to account, they can only be compelled to do so by independent proceedings (*g*).

Failure to account; but funds properly applied.

804. If a receiver, though he fails to account to the court, is shown to have applied all moneys coming to his hands in such manner as the court itself would have directed, his executors, after the lapse of many years, will not be called upon to account (*h*).

CROWN PRACTICE, Vol. X., pp. 18, 19. In such proceedings the receiver is estopped from pleading the invalidity of the recognisance (*Wellesley* v. *Mornington* (1863), 13 I. Ch. R. 559).

(*b*) *Macarty* v. *Gibson* (1728), Mos. 40; *Davies* v. *Cracraft* (1807), 14 Ves. 143; *Maunsell* v. *Egan* (1846), 3 Jo. & Lat. 251; *Re Bell's Estate, Foster* v. *Bell* (1870), L. R. 9 Eq. 172; *Sprunt* v. *Pugh* (1878), 7 Ch. D. 567. As to committal and attachment, see title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., pp. 297 *et seq.*; as to sequestration, see title EXECUTION, Vol. XIV., pp. 79 *et seq.*

(*c*) *Ludgater* v. *Channell* (1847), 15 Sim. 479; (1851), 3 Mac. & G. 175. At the present day proceedings by way of *scire facias* are usually obviated by the sureties submitting to the jurisdiction of the court having control of the action in which the receiver was appointed, and offering to have the accounts taken in that action (*Re Graham, Graham* v. *Noakes*, [1895] 1 Ch. 66). As to proceedings by *scire facias*, see title CROWN PRACTICE, Vol. X., pp. 18, 19.

(*d*) *Jenkins* v. *Briant* (1834), 7 Sim. 171; explained in *Ludgater* v. *Channell* (1851), 3 Mac. & G. 175, 180.

(*e*) *Littleboy* v. *Spooner* (1825), cited in *Ludgater* v. *Channell* (1847), 15 Sim. 479; *Re Ward, Simmons* v. *Rose, Weeks* v. *Ward* (1862), 31 Beav. 1.

(*f*) See *Gurden* v. *Badcock* (1842), 6 Beav. 157; *Magan* v. *Fallon* (1843), 5 I. Eq. R. 490; and the order in *Holmes* v. *Holmes* (1843), set out in 1 Seton, Judgments and Orders, 6th ed., p. 814.

(*g*) See *Brydges* v. *Brydges and Wood*, [1909] P. 187, C. A.; *Foster* v. *Foster* (1789), 2 Bro. C. C. 616. An admission of assets by the executors of a receiver has been treated as an admission of assets to meet whatever should be found due from the testator in his character of receiver, so as to make them liable for interest as well as principal; but this was considered a very hard case (*Tew* v. *Winterton* (*Lord*) (1792), as cited in *Hovey* v. *Blakeman* (1799), 4 Ves. 596, 605, 606); see also *Magan* v. *Fallon*, *supra*. As to the effect of admission of assets, see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., pp. 326—328.

(*h*) *Armitage* v. *Forbes* (1831), Hayes, 222.

Part VIII.—Discharge.

SECT. 1.—*When Ordered.*

SECT. 1. When Ordered.

Effect of interlocutory appointment without limitation as to time.

805. When a receiver has been appointed on an interlocutory application without any limit of time it is not necessary to provide for the continuance of his appointment in the final judgment. The silence of the judgment does not operate as a discharge of the receiver or determination of his powers (*i*). So, also, the appointment of a receiver generally by the decree in an administration action need not be continued by the order on further consideration (*j*).

Effect of appointment for limited time.

806. When a receiver is appointed only for a limited time, as in the case of *interim* orders, his office determines on the expiration of that time without any further order of the court (*k*), and if the appointment is "until judgment or further order" it is brought to an end by the judgment in the action. The judgment may provide for the continuance of the receiver, but this is regarded as a new appointment (*l*). If a further order of the court, though silent as to the receivership, is inconsistent with a continuance of the receiver, it may operate as a discharge (*m*).

Necessity for order of discharge.

807. With the above exceptions a receiver can only be discharged by an order of the court, even though circumstances have rendered the appointment nugatory. For example, the subsequent bankruptcy of the defendant does not of itself operate as a discharge (*n*), nor does the liquidation of a company over the assets of which a receiver has been appointed in a debenture-holders' action (*o*); nor does the fact that the estate for which the property is held, whether for life or years, has determined (*p*); or that the receiver has been unable to complete his security (*q*); or that the property proves to belong to a stranger (*r*); or that the creditors on whose behalf the receiver has

(*i*) *Cruse* v. *Smith* (1879), 24 Sol. Jo. 121; *Davies* v. *Vale of Evesham Preserves, Ltd.* (1895), 43 W. R. 646.

(*j*) *Re Underwood, Underwood* v. *Underwood* (1889), 37 W. R. 428.

(*k*) *Re Shephard, Atkins* v. *Shephard* (1889), 43 Ch. D. 131, 132, 133, C. A.

(*l*) *Brinsley* v. *Lynton and Lynmouth Hotel and Property Co.*, [1895] W. N. 53.

(*m*) *Ponsonby* v. *Ponsonby* (1825), 1 Hog. 321 (where, after an order appointing a receiver of the rents and profits of land, the land was sold under the court and the purchaser put into possession by order of the court).

(*n*) *Skip* v. *Harwood* (1747), 3 Atk. 564; *Taylor* v. *Eckersley* (1877), 5 Ch. D. 740; *Deacon* v. *Arden* (1884), 50 L. T. 584; *Re Parker and Parker, Ex parte Official Receiver* (1884), 1 Morr. 39.

(*o*) *Re Stubbs (Joshua), Ltd., Barney* v. *Stubbs (Joshua), Ltd.*, [1891] 1 Ch. 475, C. A.

(*p*) *Britton* v. *M'Donnell* (1843), 5 I. Eq. R. 275; *Kenny* v. *Clarke* (1843), 5 I. Eq. R. 280; *Re Stack, Stack* v. *Royse* (1862), 13 I. Ch. R. 213; see *Johnston* v. *Henderson* (1844), 8 I. Eq. R. 521.

(*q*) *Hunter* v. *Pring* (1845), 8 I. Eq. R. 102; *Lane* v. *Townsend* (1852), 2 I. Ch. R. 120.

(*r*) *Lavender* v. *Lavender* (1875), 9 I. R. Eq. 593; see *Fowler* v. *Haynes* (1863), 2 New Rep. 156.

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been appointed have been fully paid (*s*); or that the action has abated by reason of the death of a party (*t*), or has been stayed or dismissed (*a*). For though it has been said that a receiver appointed in an action must stand or fall with the action (*b*), yet there must be an order discharging the receiver (*c*).

Effect on creditors.

An order for discharge will not be made if it would prejudice creditors parties to the cause (*d*); but such creditors may be put on terms to bring their own action for a receiver forthwith (*e*).

The statutory power (*f*) conferred on a court of bankruptcy of staying any action against the property or person of the debtor implies a power to discharge a receiver appointed in the action (*g*).

When order may be obtained.

808. In general, an order for the discharge of a receiver may be obtained whenever the appointment has become either nugatory or unnecessary (*h*). In the case of annuities the receiver may be discharged, if all arrears have been paid and the security is no longer in jeopardy, notwithstanding the opposition of the annuitant (*i*) or of prior incumbrancers (*k*); but a receiver appointed on behalf of creditors will not be discharged so long as the claim of any one creditor remains unsatisfied or unadjudicated (*l*); nor will a receiver appointed at the instance of beneficiaries be discharged so long as any question of the title to the property remains outstanding (*m*).

Discharge in company's liquidation.

809. When a company goes into liquidation a receiver who has been appointed by the court in a debenture-holders' action will, as a general rule, be discharged and the liquidator appointed in his place (*n*); but this will not be done if the assets are clearly

(*s*) *Tewart* v. *Lawson* (1874), L. R. 18 Eq. 490; see *Re Powis, Ex parte Jay* (1873), 9 Ch. App. 133; *Re Hawes, Ex parte Jeffery* (1874), 9 Ch. App. 144; *Re Morrisy, Ex parte Taylor* (1874), L. R. 18 Eq. 256; *Re Potter, Ex parte Day* (1883), 48 L. T. 912 (cases relating to receivers appointed under the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 13).

(*t*) *Woods* v. *Creaghe* (1824), 1 Hog. 174; *Lavender* v. *Lavender* (1875), 9 I. R. Eq. 593; *Newman* v. *Mills* (1825), 1 Hog. 291; *Brennan* v. *Kenny* (1852), 2 I. Ch. R. 579.

(*a*) *Pitt* v. *Bonner* (1833), 5 Sim. 577.

(*b*) *Davis* v. *Marlborough* (*Duke*) (1819), 2 Swan. 108, 168.

(*c*) *Davis* v. *Marlborough* (*Duke*), *supra*; *White* v. *Westmeath* (*Lord*) (1828), Beat. 174.

(*d*) *Murrough* v. *French* (1827), 2 Mol. 497; *Paynter* v. *Carew* (1854), 18 Jur. 417.

(*e*) *Murrough* v. *French*, *supra*.

(*f*) Under the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 10 (2); and see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 55, 62.

(*g*) *Re Parker and Parker, Ex parte Official Receiver* (1884), 1 Morr. 39.

(*h*) *Bainbrigge* v. *Blair* (1841), 3 Beav. 421; *Davy* v. *Gronow* (1845), 14 L. J. (CH.) 134; *Barton* v. *Rock* (1856), 22 Beav. 81; *Hoskins* v. *Campbell*, *Gibbon* v. *Campbell*, [1869] W. N. 59, and cases cited in notes (*n*)—(*r*), p. 415, *ante*, (*s*)—(*a*), *supra*; *Trade Auxiliary Co.* v. *Vickers* (1873), L. R. 16 Eq. 298, 303; *Palmer* v. *Barrett* (1837), 1 Moo. P. C. C. 415, 431, 433.

(*i*) *Sankey* v. *O'Maley* (1825), 2 Mol. 491; *Braham* v. *Strathmore* (1844), 8 Jur. 567.

(*k*) *Davis* v. *Marlborough* (*Duke*), *supra*, at p. 167.

(*l*) *Largan* v. *Bowen* (1803), 1 Sch. & Lef. 296.

(*m*) *Reeves* v. *Neville* (1862), 10 W. R. 335.

(*n*) *Perry* v. *Oriental Hotels Co.* (1870), 5 Ch. App. 420; *Re Compagnie Générale de Bellegarde, Campbell* v. *Compagnie Générale de Bellegarde* (1876),

insufficient to meet the claims of the debenture-holders (*o*), or if there is no substantial amount of uncalled capital and similar assets outstanding (*p*), or if the nature of the assets is such that they are more readily realisable by an accountant or business man than by an officer of the court (*q*). If there is a dispute between the receiver and the liquidator as to the validity of the debentures and the extent of the property comprised in the security, an independent person will be appointed receiver pending determination of the question at issue (*r*).

Receiver subsequently appointed administrator *pendente lite*.

810. If the Chancery Division appoints a receiver of the personal estate of a deceased person in a creditor's administration action pending probate proceedings and the Probate Division subsequently appoints the same person administrator *pendente lite*, the Chancery Division will discharge its receiver, but will hold its hand over the administrator and make such orders on him as it may think proper, for example, for payment of debts (*s*).

Order improperly obtained.

811. The order appointing a receiver is discharged whenever it is shown to have been improperly obtained (*t*). Thus, if a receiver has been appointed of property not capable of assignment at law (*u*), or for the purpose of preventing the exercise of a legal right, such as an executor's right of retainer (*a*), or for the purpose of enabling a partner to act in excess of his powers under the partnership articles (*b*), or if property of a stranger has been erroneously included in the order (*c*), or if a person has been appointed who by reason of his position should not have been appointed, such as a trustee (*d*), or the plaintiff's solicitor (*e*), or the

2 Ch. D. 181; *Tottenham* v. *Swansea Zinc Ore Co., Ltd.* (1884), 51 L. T. 61; *Bartlett* v. *Northumberland Avenue Hotel Co.* (1885), 53 L. T. 611, C. A.; *Re Stubbs (Joshua), Ltd., Barney* v. *Stubbs (Joshua), Ltd.*, [1891] 1 Ch. 475, C. A.; *British Linen Co.* v. *South American and Mexican Co.*, [1894] 1 Ch. 108, C. A. As to the position of receivers appointed out of court, see *Re Pound (Henry), Son, and Hutchins* (1889), 42 Ch. D. 402, 419, C. A.; *Re Stubbs (Joshua), Ltd., Barney* v. *Stubbs (Joshua), Ltd., supra*; and see p. 339, *ante*; title COMPANIES, Vol. V., p. 378.

(*o*) *Strong* v. *Carlyle Press*, [1893] 1 Ch. 268.

(*p*) *Re Stubbs (Joshua), Ltd., Barney* v. *Stubbs (Joshua), Ltd., supra.*

(*q*) *British Linen Co.* v. *South American and Mexican Co., supra* (where the nominee of the debenture-holders was appointed receiver of certain special securities and the liquidator was appointed receiver of all other assets).

(*r*) *Re House Improvement Association, Ltd., Giles* v. *Nuttall* (1885), 78 L. T. Jo. 130, 352, C. A.

(*s*) *Tichborne* v. *Tichborne, Ex parte Norris* (1869), L. R. 1 P. & D. 730; see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 201; and see p. 353, *ante*.

(*t*) *Buxton* v. *Monkhouse* (1810), Coop. G. 41; *Piperno* v. *Harmston* (1886), 3 T. L. R. 219, C. A.

(*u*) *Lucas* v. *Harris* (1886), 18 Q. B. D. 127, C. A.; *Brenan* v. *Morrissey* (1890), 26 L. R. Ir. 618; *MacDonald* v. *O'Toole*, [1908] 2 I. R. 386.

(*a*) *Re Wells, Molony* v. *Brooke* (1890), 45 Ch. D. 569.

(*b*) *Niemann* v. *Niemann* (1889), 43 Ch. D. 198, C. A.

(*c*) *Fowler* v. *Haynes* (1863), 2 New Rep. 156.

(*d*) —— v. *Jolland* (1802), 8 Ves. 72.

(*e*) *Re Lloyd, Allen* v. *Lloyd* (1879), 12 Ch. D. 447, C. A.

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next friend of an infant plaintiff (*f*), or who has subsequently come under some disqualification, statutory or otherwise (*g*), in all such cases either the receiver or the order appointing the receiver will be discharged as the justice of the case may require.

Defaulting or absconding receiver.

812. Any default by a receiver in passing his accounts, paying his balances, or otherwise, may be ground for his discharge (*h*), and a receiver who becomes bankrupt (*i*), or absconds (*k*), will be discharged; but it would appear that the mere fact that the receiver has left the neighbourhood of the property and gone to reside at a distance does not justify discharge, unless all parties consent (*l*).

Incompetence of receiver.

The incompetence of a receiver is a ground for his discharge, but not the mere fact that some other person is shown to be more competent (*m*).

Misconduct of receiver.

Misconduct may also justify discharge. Thus, a receiver appointed in a partnership action who allows the rent of the partnership premises to get into arrear so that the landlord distrains, or tries to move the business for the benefit of the plaintiff, who is his personal friend, may be discharged (*n*); but the mere fact that the receiver has allowed the owner to remain in possession of part of the property is not sufficient, for the parties might have applied to the court for delivery of possession to the receiver (*o*).

Appointment of receiver on behalf of prior interest.

813. A prior incumbrancer desiring to take possession is entitled to have the receiver obtained by a puisne incumbrancer discharged (*p*) and a nominee of his own substituted (*q*), but, on grounds of convenience, the existing receiver is generally appointed, if he is willing to act as receiver in the action of the prior incumbrancer (*r*). The receiver appointed in an administration action may be discharged at the instance of a mortgagee who is not

(*f*) *Taylor* v. *Oldham* (1822), Jac. 527, 529.

(*g*) *Mayne* v. *Mayne* (1825), 2 Mol. 362 (an Irish beneficed clergyman disqualified by stat. (1824) 5 Geo. 4, c. 91, s. 2; but, in this case, consider the effect of the Irish Church Act, 1869 (32 & 33 Vict. c. 42)); *Re Stokes, a Minor* (1844), 7 I. Eq. R. 450; *Meara* v. *Egan* (1846), 9 I. Eq. R. 259 (solicitor's clerk disqualified by Rules of Court then in force in Ireland), where an unreported Irish case, *Barclay* v. *O'Brien* (1825), is cited, in which a receiver was discharged on its being found that he had become executor of the plaintiff, since deceased.

(*h*) R. S. C., Ord. 50, r. 21; *Bertie* v. *Abingdon* (*Lord*) (1845), 8 Beav. 53, 56; *Re St. George's Estate* (1887), 19 L. R. Ir. 566.

(*i*) *Hills* v. *Reeves* (1882), 31 W. R. 209, 210.

(*k*) *Re Graham, Graham* v. *Noakes*, [1895] 1 Ch. 66; *Shackel* v. *Marlborough* (*Duke*) (1844), 1 Seton, Judgments and Orders, 6th ed., p. 805.

(*l*) *Davy* v. *Gronow* (1845), 14 L. J. (CH.) 134.

(*m*) *Re Bangor* (*Lord*), *a Lunatic* (1818), 2 Mol. 518 (a lunacy case).

(*n*) *Mitchell* v. *Condy*, [1873] W. N. 232.

(*o*) *Griffith* v. *Griffith* (1751), 2 Ves. Sen. 400.

(*p*) *Langton* v. *Langton* (1855), 7 De G. M. & G. 30, C. A.; *Walmsley* v. *Mundy* (1884), 13 Q. B. D. 807, C. A.; *Re Southern Rail. Co., Ex parte Robson* (1885), 17 L. R. Ir. 121, 140; *Re London United Breweries, Ltd., Smith* v. *London United Breweries, Ltd.*, [1907] 2 Ch. 511, 512; *Morgan* v. *Smith* (1830), 1 Mol. 541.

(*q*) *Stanley* v. *Coulthurst*, [1868] W. N. 305; *Re Piccadilly Hotel, Ltd., Paul* v. *Piccadilly Hotel, Ltd.*, [1911] 2 Ch. 534, 538; *Re Metropolitan Amalgamated Estates, Ltd., Fairweather* v. *The Co.*, [1912] 2 Ch. 497; and see *Burke* v. *Browne* (1843), 6 I. Eq. R. 213.

(*r*) *Duder* v. *Amsterdamsch Trustees Kantoor*, [1902] 2 Ch. 132, 144.

a party to the action (*s*). A receiver obtained by individual creditors may be discharged on a receiver being appointed on behalf of all creditors (*t*).

Discharge on receiver's own application.

814. A receiver will not be discharged on his own application unless he shows reasonable cause for such discharge (*a*), such as failing health or other incapacity (*b*), or unless all parties interested consent (*c*).

Application by one of several parties.

815. When the parties interested are numerous, the receiver will not be discharged on the application only of the party at whose instance he was appointed (*d*), for he is an officer of the court appointed for the benefit of all parties (*e*); when a receiver has been appointed at the instance of two infants, tenants in common, the court will not discharge the receiver at the request of one of them who has attained her majority (*f*).

SECT. 2.—*How Obtained.*

When application may be made.

816. The application for discharge may be made by motion or summons in the action, or, exceptionally, by petition (*g*); but an order for discharge may be made on further consideration of an action without any special application for the purpose, and the cost of an unnecessary application for discharge may be disallowed in such a case (*h*).

By whom application may be made.

817. The application may be made not only by parties to the cause, but by any stranger who is adversely affected by the continuance of the receivership, such as a mortgagee desiring to take possession (*i*); and when a company goes into liquidation the liquidator may apply for the discharge of a receiver appointed in a debenture-holders' action (*k*). So, also, a surety may apply for the discharge of a receiver who has absconded (*l*) or become insane (*m*).

(*s*) *Thomas* v. *Brigstocke* (1827), 4 Russ. 64.

(*t*) *Salt* v. *Donegall, Cocker* v. *Donegall, Houlditch* v. *Donegall* (1835), L. & G. *temp.* Sugd. 82.

(*a*) *Smith* v. *Vaughan* (1744), Ridg. *temp.* H. 251.

(*b*) *Richardson* v. *Ward* (1822), Madd. & G. 266.

(*c*) *Cox* v. *M'Namara* (1847), 11 I. Eq. R. 356; and see p. 407, *ante*.

(*d*) *Bainbrigge* v. *Blair* (1841), 3 Beav. 421.

(*e*) *Davis* v. *Marlborough (Duke)* (1819), 2 Swan. 108, 118; *Re Newdigate Colliery, Ltd., Newdegate* v. *The Co.*, [1912] 1 Ch. 468, 470, C. A.; and see p. 384, *ante*.

(*f*) *Smith* v. *Lyster* (1841), 4 Beav. 227.

(*g*) Daniell's Chancery Forms, 5th ed., 1901, p. 885; 1 Seton, Judgments and Orders, 7th ed., p. 781.

(*h*) *Stilwell* v. *Mellersh* (1851), 20 L. J. (CH.) 356, 362; see *Tewart* v. *Lawson* (1874), L. R. 18 Eq. 490.

(*i*) *Thomas* v. *Brigstocke, supra; Walmsley* v. *Mundy* (1884), 13 Q. B. D. 807, C. A.; *Re St. George's Estate* (1887), 19 L. R. Ir. 566; *Preston* v. *Tunbridge Wells Opera House, Ltd.*, [1903] 2 Ch. 323.

(*k*) *Re Compagnie Générale de Bellegarde, Campbell* v. *Compagnie Générale de Bellegarde* (1876), 2 Ch. D. 181; *Tottenham* v. *Swansea Zinc Ore Co.* (1884), 32 W. R. 716; *Bartlett* v. *Northumberland Avenue Hotel Co.* (1885), 53 L. T. 611, C. A.; and see title COMPANIES, Vol. V., p. 378.

(*l*) *Shackel* v. *Marlborough (Duke)* (1844), cited in 1 Seton, Judgments and Orders, 6th ed., p. 805; and, as to the position of sureties generally, see pp. 420 *et seq.*, *post*.

(*m*) *Webb* v. *Cashel* (1847), 11 I. Eq. R. 558.

SECT. 2. How Obtained.

Notice of application.

818. Notice of the application should be served on the receiver (*n*), but the receiver, being a mere officer of the court, should not appear, and his costs may be disallowed if he does so (*o*).

Effect of order.

819. An order for the discharge of a receiver deprives him of his right to receive, but does not put an end to his liability to account (*p*). The order, in fact, usually directs him to pass his final account and pay any balance that may be found due from him, and it is only on such payment that his recognisance is directed to be vacated (*q*).

Part IX.—Position of Sureties.

SECT. 1.—*Extent of Liability.*

Legal and equitable liability.

820. On any default by a receiver causing a forfeiture of his recognisance, his sureties become immediately liable at law to the whole of the penal sum therein named. In equity, however, they are relieved from total forfeiture, but only on condition of paying not only any balance due from the receiver, but all sums for which the receiver would have been properly accountable to the court (*r*).

Liability for interest on balances.

Thus they are liable to the payment of interest on balances improperly retained in the receiver's hands, unless the laches of the parties renders it inequitable that the payment of interest should be enforced (*s*).

Costs of proceedings.

They are also liable for the costs of any proceedings necessarily or properly incurred in consequence of the receiver's default, such as the costs of an attachment for failure to account, of

(*n*) *A.-G.* v. *Haberdashers' Co.* (1838), 2 Jur. 915.

(*o*) *Herman* v. *Dunbar* (1857), 23 Beav. 312.

(*p*) *Ingham* v. *Sutherland* (1890), 63 L. T. 614; *Wellesley* v. *Mornington* (1863), 13 I. Ch. R. 559.

(*q*) 1 Seton, Judgments and Orders, 7th ed., p. 781; and see *Lawson* v. *Ricketts* (1849), 11 Beav. 627.

(*r*) *Dawson* v. *Raynes* (1826), 2 Russ. 466; *Re Graham, Graham* v. *Noakes*, [1895] 1 Ch. 66; title GUARANTEE, Vol. XV., p. 484; and see *Kenney* v. *Employers' Liability Assurance Corporation*, [1901] 1 I. R. 301, C. A. (where the surety of a receiver appointed by a mortgagee under statutory powers was held liable to make good to the mortgagor a balance found due from the receiver and not paid by him, notwithstanding that the mortgagee had realised his security by sale and obtained payment of all that was due to him under the mortgage). It is apprehended that this is the true ground of liability, namely, that the surety is excused from his legal liability only on condition of doing what would be equitable as between the receiver and all the parties to the action. In the earlier cases attention was directed rather to the exact wording of the recognisance; see *R.* v. *Albert* (1716), Bunb. 4; *Re Lockey, a Lunatic* (1844), 1 Ph. 509; *Maunsell* v. *Egan* (1845), 8 I. Eq. R. 372; (1846), 3 Jo. & Lat. 251; 9 I. Eq. R. 283. As to the equitable principle of relief against penalties, see title EQUITY, Vol. XIII., pp. 150 *et seq.*; and see title BONDS, Vol. III., pp. 93 *et seq.*

(*s*) *Dawson* v. *Raynes*, *supra*; *Re Herricks, Minors* (1853), 3 I. Ch. R. 183, 187. Where the default is not that of the receiver himself, but of his executors after his death, the rate of interest is 4 per cent. only, instead

SECT. 1. Extent of Liability.

applications for his discharge, and for the appointment of another person in his place, and of any proceedings taken to enforce the recognisance (*t*); but it would appear that they are not liable for any moneys for which the receiver, though accountable, cannot be made to account in the action (*u*), and in no case can the total amount of their liability exceed the sum named in their recognisance (*a*).

Sureties' right to benefit of receiver's indemnity.

821. Moreover, sureties are entitled to the benefit of any right of indemnity which the receiver enjoys against the assets; so that if a receiver makes default in paying into court a balance found due from him, his sureties may nevertheless be excused if he is entitled to an indemnity for a larger amount (*b*).

Duration of liability.

822. When a receiver who has been appointed manager for a limited time continues to act as manager beyond that time without the authority of the court, his sureties are nevertheless liable for the profits of such management which come to the hands of the receiver as receiver (*c*); and, similarly, sureties are liable for moneys coming to the hands of a receiver before his appointment is perfected by the completion of his security (*d*).

Effect of death of receiver.

823. The security given by the recognisance or bond of a surety is not a continuing security, but comes to an end on the death of the receiver, except as to breaches then incurred; and when once, after such death, judgment has been recovered against a surety, and execution levied, he is freed from any further liability, except perhaps for costs (*e*).

Effect of discharge in bankruptcy.

A discharge in bankruptcy does not discharge a debt due on a recognisance (*f*).

SECT. 2.—*Enforcement of Liability.*

Modern practice.

824. Formerly, on default by the receiver, it was the practice for the plaintiff or other party interested to obtain leave to put the recognisance in suit at law against the sureties in the name of the cognisee (*g*). Such leave was not granted as of right, but lay in the

of the usual penal rate of 5 per cent. (*Clements* v. *Beresford* (1846), 10 Jur. 771); and see title MONEY AND MONEY-LENDING, Vol. XXI., p. 42.

(*t*) *Maunsell* v. *Egan* (1845), 8 I. Eq. R. 372; (1846), 3 Jo. & Lat. 251; 9 I. Eq. R. 283; *Re Nugent's Estate*, [1897] 1 I. R. 464.

(*u*) *Re Walker*, [1907] 2 Ch. 120, C. A.; see *Board of Trade* v. *Employers' Liability Assurance Corporation, Ltd.*, [1910] 2 K. B. 649, C. A.

(*a*) *Watters* v. *Watters* (1847), 11 I. Eq. R. 335; *Shackel* v. *Marlborough* (*Duke*) (1844), 1 Seton, Judgments and Orders, 6th ed., p. 805.

(*b*) *Re British Power Traction and Lighting Co., Ltd., Halifax Joint Stock Banking Co., Ltd.* v. *British Power Traction and Lighting Co., Ltd.*, [1910] 2 Ch. 470.

(*c*) *Re Herricks, Minors* (1853), 3 I. Ch. R. 183, 186.

(*d*) *Smart* v. *Flood & Co.* (1883), 49 L. T. 467.

(*e*) *Re Herricks, Minors, supra*, at p. 194; but see *Watters* v. *Watters, supra*; *Keily* v. *Murphy* (1837), Sau. & Sc. 479; and title GUARANTEE, Vol. XV., pp. 491 *et seq.*

(*f*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 30; and see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 269, 270.

(*g*) *Stewart* v. *Hoare* (1796), 1 Seton, Judgments and Orders, 7th ed., p. 772.

SECT. 2. Enforcement of Liability.

discretion of the court, having regard to the equitable circumstances of the case (*h*). It is now, however, usual for the sureties to submit to the jurisdiction of the court by which the receiver was appointed and to offer to have the accounts taken against themselves in the action (*i*). In the case of a guarantee society acting as surety this is expressly provided for by the form of bond now in use (*k*). So also, in the form of undertaking now prescribed, where the amount for which security is required does not exceed £500, the sureties expressly submit to the jurisdiction of the court to determine any claim made against them on their undertaking (*l*).

Proceedings first taken against surety.

825. Though, as a general rule, proceedings cannot be taken against a surety until proper steps have been taken against the receiver to enforce the performance of his duty under the recognisance or bond and the receiver has made default thereunder, yet if the receiver has absconded or become bankrupt or died, or if for any other reason it is impracticable to pursue the ordinary course against him, proceedings may be commenced against the surety even before the actual balance due from the receiver has been ascertained (*m*).

Stay of proceedings.

826. The surety may obtain an order for the stay of such proceedings on payment into court of the amount of his recognisance (*n*) or of the balance found due from the receiver (*o*), and, on such payment may have the recognisance vacated so far as he is concerned (*p*).

SECT. 3.—*Rights against Other Parties.*

Indemnity and contribution.

827. A surety who has been called upon to make any payment has a right to be indemnified by his principal to the whole amount thereof (*q*), and also by his co-sureties in proportion to the amount for which each surety has made himself liable (*r*). This is an equitable

(*h*) *R.* v. *Bayly* (1841), 1 Dr. & War. 213, *per* SUGDEN, L.C.; *Ludgater* v. *Channell* (1851), 3 Mac. & G. 175, 178.

(*i*) *Re Graham, Graham* v. *Noakes*, [1895] 1 Ch. 66; see *Re British Power Traction and Lighting Co., Ltd., Halifax Joint Stock Banking Co., Ltd.* v. *British Power Traction and Lighting Co., Ltd.*, [1910] 2 Ch. 470, 473.

(*k*) See R. S. C., Appendix L, No. 21; *Smart* v. *Flood & Co.* (1883), 49 L. T. 467. The bond also stipulates expressly for indemnity by the receiver, and provides for determination of the liability of the society in case of non-payment by the receiver of an agreed annual premium.

(*l*) See R. S. C., Appendix L, No. 21A.

(*m*) *Ludgater* v. *Channell, supra;* and see title GUARANTEE, Vol. XV., p. 488.

(*n*) *Watters* v. *Watters* (1847), 11 I. Eq. R. 335.

(*o*) *Walker* v. *Wild* (1816), 1 Madd. 528 (where by consent payment was allowed by instalments); *Maunsell* v. *Egan* (1845), 8 I. Eq. R. 372; (1846), 3 Jo. & Lat. 251; 9 I. Eq. R. 283.

(*p*) In *Mann* v. *Stennett* (1845), 8 Beav. 189, payment to the plaintiff's solicitor was held insufficient without evidence of the solicitor's authority to receive it; and see *Webb* v. *Cashel* (1847), 11 I. Eq. R. 558.

(*q*) See the form of order in *Lawson* v. *Wright* (1786), 1 Cox, Eq. Cas. 275; and see title GUARANTEE, Vol. XV., pp. 516 *et seq.*

(*r*) *Re M'Donaghs, Minors* (1876), 10 I. R. Eq. 269; see title GUARANTEE, Vol. XV., pp. 526 *et seq.*

right, wholly independent of the form of the recognisance or of any contract between the parties (*s*). The right of indemnity against principal and co-sureties is not limited to the actual sums disbursed, but extends to interest at 4 per cent. and to the costs of enforcing the claim (*t*).

Extent of right.

828. As against any beneficial interest of the receiver himself in the property to which the order relates, a surety is entitled to an order declaring such interest liable to make good the amount he has been compelled to pay (*a*); and he is entitled to a lien for his disbursements on any balance payable to the receiver out of court, and may obtain an injunction restraining the receiver from taking out such balance without discharging the surety's claim (*b*).

Right as against beneficial interest of receiver.

829. For the purpose of enforcing the claim, leave may be obtained to put the recognisance in suit against the principal and co-sureties or their representatives (*c*), but without prejudice to the question whether representatives can be compelled to account in such proceedings (*d*).

Enforcement of right.

830. A surety is not as a rule entitled to attend at the taking of the receiver's accounts, and still less to have them re-opened after they have been passed (*e*); but, where the receiver has become bankrupt or has died insolvent, or where it is reasonably certain that the receiver will not be able to pay the balance due from him, the surety may obtain an order giving leave to attend the taking of accounts at his own expense (*f*), and also, in a proper case, to have past accounts reopened, on the terms of paying the costs of such re-opening and new account and also interest from the date of the order on the sum which he may eventually be called upon to pay (*g*).

Right to attend the taking of receiver's accounts.

(*s*) *Dering* v. *Winchelsea* (*Earl*) (1787), 1 Cox, Eq. Cas. 318; and see *Brandon* v. *Brandon* (1859), 3 De G. & J. 524, C. A. (where certain property of a receiver, which had been expressly excluded from an assignment to his sureties by way of indemnity, was nevertheless held liable to them on general equitable principles).

(*t*) *Brandon* v. *Brandon, supra*; *Re Swan's Estate* (1869), 4 I. R. Eq. 209, C. A., following *Hitchman* v. *Stewart* (1855), 3 Drew. 271, and overruling *Onge* v. *Truelock* (1828), 2 Mol. 31, 42, and *Salkeld* v. *Abbott* (1832), Hayes & Jo. 110.

(*a*) *Brandon* v. *Brandon, supra.*

(*b*) *Glossop* v. *Harrison and Hawkes* (1814), Coop. G. 61, following *Wright* v. *Morley, Morley* v. *St. Alban* (1805), 11 Ves. 12.

(*c*) *Woods* v. *Creaghe* (1828), 2 Hog. 50; *Salkeld* v. *Abbott* (1832), Hayes, 576; *Henderson* v. *Skerrett* (1843), 5 I. Eq. R. 404; and see Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97), s. 5; *Shackel* v. *Marlborough* (*Duke*) (1844), 1 Seton, Judgments and Orders, 6th ed., p. 805.

(*d*) *Ludgater* v. *Channell* (1851), 3 Mac. & G. 175.

(*e*) *Re Birmingham Brewing, Malting and Distilling Co., Ltd.* (1883), 31 W. R. 415 (a case relating to a liquidator for whom a guarantee society had become surety).

(*f*) *Simmons* v. *Rose* (1860), and *Sharp* v. *Wright* (1878), cited in 2 Daniell's Chancery Practice, 7th ed., Vol. II., p. 1456; and see *Dawson* v. *Raynes* (1826), 2 Russ. 466; *National Bank* v. *Kenney*, [1898] 1 I. R. 197; *Shuff* v. *Holloway* (1857), cited in 2 Daniell's Chancery Practice, 7th ed., Vol. II., p. 1455.

(*g*) *Re Birmingham Brewing, Malting and Distilling Co., Ltd., supra.*

SECT. 4.
Discharge.

SECT. 4.—*Discharge.*

No discharge when receiver not in default unless by consent.

831. So long as the receiver is not in default, a surety will not be discharged at his own request, unless he has accepted the position by inadvertence (*h*), or can prove underhand practice in which the receiver is implicated (*i*), or unless it is clearly for the benefit of the parties that he should be discharged (*k*); but he may be discharged with the consent of all parties, including his co-surety and the receiver, the order being made, in cases where the recognisance is joint in form, without prejudice to the liability of the receiver and the remaining surety for past and future defaults of the receiver (*l*).

On death or bankruptcy of receiver.

When a receiver has died or absconded or become bankrupt, his sureties may obtain an order for their discharge on payment into court of the balances which may be certified to be due from him (*m*).

Part X.—Managers.

SECT. 1.—*When Appointed.*

Management of trade or business.

832. With a view to the preservation of property, it is often necessary that the receiver appointed by the court should also act as manager of a trade or business. Thus, a manager may be appointed of the business of a deceased person pending the constitution of a legal representative (*n*), or a receiver may be authorised to manage the farms of a testator during the minority of infants till tenants can be found (*o*), or to manage the business of a testator pending sale in an administration action (*p*), or when the trustees

(*h*) *Swain* v. *Smith* (1827), cited in 1 Seton, Judgments and Orders, 7th ed., p. 775 (where the surety had become such in breach of his partnership articles); compare *Hunter* v. *Pring* (1845), 8 I. Eq. R. 102.

(*i*) *Hamilton* v. *Brewster* (1820), 2 Mol. 407.

(*k*) *Griffith* v. *Griffith* (1751), 2 Ves. Sen. 400.

(*l*) *O'Keeffe* v. *Armstrong* (1852), 2 I. Ch. R. 115.

(*m*) *Shuff* v. *Holloway* (1857), cited in 2 Daniell's Chancery Practice, 7th ed., Vol. II., p. 1455.

(*n*) *Steer* v. *Steer* (1864), 2 Drew. & Sm. 311; *Overington* v. *Ward* (1865), 34 Beav. 175; *Blackett* v. *Blackett* (1871), 24 L. T. 276; *Re Baker, deceased, Giddings* v. *Baker* (1882), 26 Sol. Jo. 682; 1 Seton, Judgments and Orders, 7th ed., p. 730; compare *Spencer* v. *Shaw*, [1875] W. N. 115. It would appear that the application for this purpose is more properly made in the Probate Division (*Re Parker, Dearing* v. *Brooks* (1885), 54 L. J. (CH.) 694; *Re Green, Green* v. *Knight*, [1895] W. N. 69; *Re Wright, Morrison* v. *Jones* (1888), 32 Sol. Jo. 721 (where a receiver and manager was appointed during the Long Vacation before probate, notwithstanding that proceedings were pending in the Probate Division)); and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 202).

(*o*) *Re Herricks, Minors* (1853), 3 I. Ch. R. 183.

(*p*) *Re Brooke, Brooke* v. *Brooke*, [1894] 2 Ch. 600; *Re Hodges, Hodges* v. *Hodges*, [1899] 1 I. R. 480, 482; *Ramsay* v. *Simpson*, [1899] 1 I. R. 194, C. A.

of the will are not themselves qualified to carry it on and cannot agree on the appointment of a manager (*q*).

Pending litigation or realisation.

833. A manager is frequently appointed for the preservation of a business or property pending litigation as to the rights of the parties (*r*) or pending realisation by sale (*s*), especially in the case of mining properties, where any cessation of business might cause serious damage to the mine, or forfeiture of the lease under which it is held (*a*), and, in case of mismanagement, a receiver and manager may be appointed even against a mortgagee in possession (*b*). But the court does not assume the permanent management of any business or undertaking (*c*).

In partnerships.

834. In the case of subsisting partnerships a receiver and manager is not appointed unless dissolution is claimed by the writ, or the court is satisfied that dissolution is inevitable (*d*); if, however, the partnership has already determined and the parties cannot agree as to management pending realisation of the assets, the court will appoint a manager for the purpose of winding up (*e*); and in such case a solvent partner is generally entitled to be appointed manager, unless there is good reason, on the ground of misconduct or otherwise, for excluding him (*f*). So also, in the case of companies, if

(*q*) *Hart* v. *Denham*, [1871] W. N. 2; *Re Irish, Irish* v. *Irish* (1888), 40 Ch. D. 49.

(*r*) *Sheppard* v. *Oxenford* (1855), 1 K. & J. 491 (where the defendant, sole director of a partnership association, had left the country after writ issued); *Hall* v. *Hall* (1850), 3 Mac. & G. 79, 91; *Hargrave* v. *Hargrave* (1846), 9 Beav. 549 (partition suit in which plaintiff's title was questioned); *Searle* v. *Smales* (1855), 3 W. R. 437 (partition suit in which title was complicated and rents in danger of being lost); *Grafton* (*Duke*) v. *Taylor, Manvers* (*Earl*) v. *Taylor* (1891), 7 T. L. R. 588 (manager appointed at instance of legal mortgagee of landed estates who desired to avoid the responsibility of becoming "mortgagee in possession"); *Howell* v. *Dawson* (1884), 13 Q. B. D. 67; *Hyde* v. *Warden* (1876), 1 Ex. D. 309, C. A.

(*s*) *Taylor* v. *Neate* (1888), 39 Ch. D. 538; *Wilson* v. *Greenwood* (1818), 1 Swan. 471.

(*a*) *Gibbs* v. *David* (1875), L. R. 20 Eq. 373; *Peek* v. *Trinsmaran Iron Co.* (1876), 2 Ch. D. 115; *Boyle* v. *Bettws Llantwit Colliery Co.* (1876), 2 Ch. D. 726; *County of Gloucester Bank* v. *Rudry Merthyr Steam and House Coal Colliery Co.*, [1895] 1 Ch. 629, C. A.; and see title MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 513, 549, 555.

(*b*) *Rowe* v. *Wood* (1822), 2 Jac. & W. 553.

(*c*) *Gardner* v. *London, Chatham and Dover Rail. Co.* (No. 1), *Drawbridge* v. *Same, Gardner* v. *Same* (No. 2), *Imperial Mercantile Credit Association* v. *Same* (1867), 2 Ch. App. 201, 212; *Re Newdigate Colliery Co., Ltd., Newdegate* v. *The Co.*, [1912] 1 Ch. 468, 472, C. A.; *Rowlands* v. *Evans, Williams* v. *Rowlands* (1861), 30 Beav. 302, 310; and see title MINES, MINERALS, AND QUARRIES, Vol. XX., p. 511.

(*d*) *Waters* v. *Taylor* (1808), 15 Ves. 10; *Goodman* v. *Whitcomb* (1820), 1 Jac. & W. 589; *Const* v. *Harris* (1824), Turn. & R. 496, *per* Lord ELDON, L.C., at pp. 518, 519; *Richards* v. *Davies* (1831), 2 Russ. & M. 347; *Hall* v. *Hall* (1850), 3 Mac. & G. 79; *Roberts* v. *Eberhardt* (1853), Kay, 148; and see title PARTNERSHIP, Vol. XXII., pp. 77, 78, 102.

(*e*) *Sargant* v. *Read* (1876), 1 Ch. D. 600; *Taylor* v. *Neate, supra; Lees* v. *Jones* (1857), 3 Jur. (N. S.) 954.

(*f*) *Wilson* v. *Greenwood* (1818), 1 Swan. 471; *Sargant* v. *Read, supra; Collins* v. *Barker*, [1893] 1 Ch. 578; see title PARTNERSHIP, Vol. XXII., p. 78.

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there is no properly constituted governing body, or such dissension among the directors that the business of the company cannot be carried on to advantage, a receiver and manager may be appointed until a general meeting can be held and a proper governing body constituted (*g*).

As between co-owners.

835. As between co-owners of land, whether joint tenants or tenants in common, it was formerly held that a receiver, and *a fortiori* a manager, could not be appointed unless a case of actual exclusion were made out (*h*). Now, however (*i*), it is thought that a manager may be appointed in a proper case, either for the *interim* preservation of the property or with a view to sale (*k*).

Mining property.

In the case of mining property, the working of the mines must be regarded as a trade or business carried on by the co-owners in partnership (*l*), and a manager is not appointed except for the purpose of dissolution (*m*).

At the instance of mortgagees.

836. At the instance of an incumbrancer a receiver will not be authorised to act as manager, unless the goodwill or the business is expressly or impliedly included in the security (*n*), or unless it is

(*g*) *Featherstone* v. *Cooke* (1873), L. R. 16 Eq. 298, 301; *Trade Auxiliary Co.* v. *Vickers* (1873), L. R. 16 Eq. 303; and see title COMPANIES, Vol. V., p. 251.

(*h*) *Sandford* v. *Ballard* (No. 2) (1864), 33 Beav. 401.

(*i*) Having regard to the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (8).

(*k*) See *Porter* v. *Lopes* (1877), 7 Ch. D. 358.

(*l*) *Jefferys* v. *Smith* (1820), 1 Jac. & W. 298.

(*m*) *Roberts* v. *Eberhardt* (1853), Kay, 148; and see title MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 511—513.

(*n*) A manager was refused in *Whitley* v. *Challis*, [1892] 1 Ch. 64, C. A. (where a hotel keeper, to whom the landlord had agreed to grant a new lease on his rebuilding the hotel premises, gave a charge on the agreement and on the hotel and buildings to be erected thereunder). In the following cases a receiver and manager was appointed:—*Truman & Co.* v. *Redgrave* (1881), 18 Ch. D. 547 (mortgage to brewers of licensed premises, together with the trade fixtures, goodwill and licences); *Taylor* v. *Soper* (1890), 62 L. T. 828 (where the brewers' mortgage was in similar terms); *Re Victoria Steamboats, Ltd., Smith* v. *Wilkinson*, [1897] 1 Ch. 158 (debenture of a trading company charging its undertaking and all its property); *Peek* v. *Trinsmaran Iron Co.* (1876), 2 Ch. D. 115 (debenture of a mining company charging all the real and personal estate, assets, plant, machinery and effects of the company); *Makins* v. *Ibotson (Percy) & Sons*, [1891] 1 Ch. 133; *Edwards* v. *Standard Rolling Stock Syndicate*, [1893] 1 Ch. 574 (debentures of a trading company charging all its property whatsoever and wheresoever, both present and future); *Campbell* v. *Lloyd's, Barnett's and Bosanquet's Bank, Ltd.* (1889), [1891] 1 Ch. 136, n. (mortgage of freehold and leasehold premises and collieries and of loose and fixed plant); *County of Gloucester Bank* v. *Rudry Merthyr Steam and House Coal Colliery Co.*, [1895] 1 Ch. 629, C. A. (mortgage of land, mines, beds and seams of coal, and all buildings and erections, fixed motive power, plant etc.); *Re Leas Hotel Co., Salter* v. *Leas Hotel Co.*, [1902] 1 Ch. 332 (debenture charging all the buildings, property, stock-in-trade, furniture, chattels and effects of an hotel company); *Fairfield Shipbuilding and Engineering Co., Ltd.* v. *London and East Coast Express Steamship Co., Ltd.*, [1895] W. N. 64 (statutory mortgage of a steamship); *Re Boynton (A.), Ltd., Hoffmann* v. *Boynton (A.), Ltd.*, [1910] 1 Ch. 519, 520 (debenture charging all the property and assets of an hotel company); *Chaplin* v. *Young* (1862), 6 L. T. 97 (mortgage of a newspaper); and see titles COMPANIES, Vol. V., p. 380; MORTGAGE, Vol. XXI., p. 262.

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essential to the preservation of the security that the business should be kept on foot (*o*). The appointment of a manager of a business at the instance of an incumbrancer is made solely with a view to the realisation of the security by the sale of the business as a going concern (*p*). An incumbrancer is only entitled to a sale of what is included in his security, and if the business is not included in the security the court has no jurisdiction to appoint a manager (*q*).

Incumbrancers of public undertakings.

Thus, debenture-holders of a company incorporated for a public purpose are not entitled to a sale and consequently cannot obtain the appointment of a manager (*r*). Where the management of a public undertaking is entrusted by Act of Parliament to certain persons with defined powers, a manager cannot be appointed at the instance of a mortgagee (*s*), unless, perhaps, the persons entrusted with the management act unreasonably or perversely (*t*), or have interests which conflict with their duty (*a*).

Creditors of railway companies.

837. In the case of railway companies, however, it is now provided by statute that a judgment creditor may obtain the appointment, if necessary, of a manager of the undertaking as well as of a receiver (*b*). Such an appointment is considered necessary whenever the appointment of a receiver alone would lead to a

(*o*) *County of Gloucester Bank* v. *Rudry Merthyr Steam and House Coal Colliery Co.*, [1895] 1 Ch. 629, C. A., *per* LINDLEY, L.J.; *Peek* v. *Trinsmaran Iron Co.* (1876), 2 Ch. D. 115, *per* JESSEL, M.R.

(*p*) *Gardner* v. *London, Chatham and Dover Rail. Co.* (No. 1), *Drawbridge* v. *Same, Gardner* v. *Same* (No. 2), *Imperial Credit Mercantile Association* v. *Same* (1867), 2 Ch. App. 201, 212, *per* CAIRNS, L.J.; *Securities and Properties Corporation, Ltd.* v. *Brighton Alhambra, Ltd.* (1893), 62 L. J. (CH.) 566; *Re Newdigate Colliery Co., Ltd., Newdegate* v. *The Co.*, [1912] 1 Ch. 468, 472, C. A.

(*q*) *Whitley* v. *Challis*, [1892] 1 Ch. 64, C. A.; *Re Victoria Steamboats, Ltd., Smith* v. *Wilkinson*, [1897] 1 Ch. 158; *Re Leas Hotel Co., Salter* v. *Leas Hotel Co.*, [1902] 1 Ch. 332; see *Waters* v. *Taylor* (1807), 15 Ves. 10 (where the appointment of a manager was refused partly on the ground that the plaintiff in his capacity as mortgagee was suing for foreclosure only, and not for sale).

(*r*) *Gardner* v. *London, Chatham and Dover Rail. Co.* (No. 1), *Drawbridge* v. *Same, Gardner* v. *Same* (No. 2), *Imperial Credit Mercantile Association* v. *Same, supra*; *Blaker* v. *Herts and Essex Waterworks Co.* (1889), 41 Ch. D. 399; *Marshall* v. *South Staffordshire Tramways Co.*, [1895] 2 Ch. 36, C. A., overruling *Hope* v. *Croydon and Norwood Tramways Co.* (1887), 34 Ch. D. 730, and *Bartlett* v. *West Metropolitan Tramways Co.*, [1893] 3 Ch. 437; [1894] 2 Ch. 286; see *Pegge* v. *Neath District Tramways Co.*, [1895] 2 Ch. 508; *Re Crystal Palace Co., Fox* v. *Crystal Palace Co.*, (1911), 104 L. T. 898, C. A.

(*s*) *Fripp* v. *Chard Rail. Co., Fripp* v. *Bridgewater and Taunton Canal and Stolford Rail. and Harbour Co.* (1853), 11 Hare, 241; *Potts* v. *Warwick and Birmingham Canal Navigation Co.* (1853), Kay, 142; *Ames* v. *Birkenhead Dock (Trustees)* (1855), 20 Beav. 332; *De Winton* v. *Brecon Corporation* (1859), 26 Beav. 533, 542 (the case of a statutory corporation market); *Gardner* v. *London, Chatham and Dover Rail. Co.* (No. 1), *Drawbridge* v. *Same, Gardner* v. *Same* (No. 2), *Imperial Credit Mercantile Association* v. *Same, supra*.

(*t*) *Carmichael* v. *Greenock Harbour Trustees*, [1910] A. C. 274.

(*a*) *Fripp* v. *Chard Rail. Co., Fripp* v. *Bridgewater and Taunton Canal and Stolford Rail. and Harbour Co., supra*.

(*b*) Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 4, made perpetual by stat. (1875) 38 & 39 Vict. c. 31; and see title RAILWAYS AND CANALS, Vol. XXIII., pp. 765 *et seq.*

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stoppage of the working of the railway (*c*), and the appointment extends to the whole of the undertaking of the company, even though the railway is but a small portion of such undertaking and is authorised by the Act of some other company (*d*). The court will not appoint a second manager at the instance of a second judgment creditor, so long as the first appointment has not been discharged (*e*). A director or other official of the company is nominated as manager unless there is reason to believe that the undertaking is not being honestly or fairly conducted; but he acts, of course, as the officer of the court thenceforward (*f*), his duty being to provide for the working expenses and other proper outgoings of the railway, and subject thereto to apply his receipts in payment of the debts of the company under the direction of the court (*g*).

Landlord.

838. Though a lessor, as such, has not usually sufficient interest in the business carried on by his lessee on the demised premises to justify the appointment of a manager, yet in particular cases he may be able to show such an interest as renders it just and convenient that a receiver appointed at his instance should be authorised to keep the business on foot so far as may be necessary for his protection as landlord (*h*).

Business abroad.

839. A manager may be appointed of a trade or business carried on abroad (*i*).

(*c*) *Re Manchester and Milford Rail. Co., Ex parte Cambrian Rail. Co.* (1880), 14 Ch. D. 645, C. A.

(*d*) *Re East and West India Dock Co.* (1888), 38 Ch. D. 576, C. A.

(*e*) *Re Mersey Rail. Co.* (1888), 37 Ch. D. 610, C. A.

(*f*) *Gardner* v. *London, Chatham and Dover Rail. Co.* (No. 1), *Drawbridge* v. *Same, Gardner* v. *Same* (No. 2), *Imperial Credit Mercantile Association* v. *Same* (1867), 2 Ch. App. 201, 211; *Re Manchester and Milford Rail. Co., Ex parte Cambrian Rail. Co., supra*, at p. 655; *Re Eastern and Midlands Rail. Co.* (1890), 45 Ch. D. 367, 375, C. A.; *Re Mersey Rail. Co., supra*, at p. 611.

(*g*) Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 4; *Re Wrexham, Mold and Connah's Quay Railway*, [1900] 2 Ch. 436. As to the distribution of receipts, see *Re Liskeard and Caradon Railway*, [1903] 2 Ch. 681.

(*h*) Thus, where brewers had demised licensed premises to a lessee, taking covenants from him to do nothing that might endanger the licences and to surrender them on the determination of the tenancy, and the lessee had threatened to vacate the premises, the receiver appointed at the instance of the lessors, pending trial of their action for recovery of possession, was authorised to take possession of the licences, to keep the premises open as an hotel, and to do all such acts as might be necessary for that purpose and for the purpose of preserving the licences from risk of forfeiture (*Leney & Sons, Ltd.* v. *Callingham and Thompson*, [1908] 1 K. B. 79, C. A., modifying the form of order in *Charrington & Co., Ltd.* v. *Camp*, [1902] 1 Ch. 386, and *Whitbread & Co.* v. *Grain* (1907), 23 T. L. R. 462, which had gone to the extent of ordering delivery to the receiver of all books and papers relating to the lessee's business, and authorising him to appoint some fit person to carry on the business under his supervision).

(*i*) *Codrington* v. *Johnstone* (1838), 1 Beav. 520; *Bunbury* v. *Bunbury* (1839), 1 Beav. 318, 331, 336; *Sheppard* v. *Oxenford* (1855), 1 K. & J. 491, 501; *Re South Western of Venezuela (Barquisimeto) Rail. Co.*, [1902] 1 Ch. 701; *Re Huinac Copper Mines, Ltd., Matheson & Co.* v. *The Co.*, [1910] W. N. 218.

SECT. 2.—*Effect of Appointment.*

SECT. 2. Effect of Appointment.

840. The appointment of a manager by the court does not dissolve or annihilate any existing firm or company, but it takes the conduct of the business out of the hands of those who previously carried it on and vests entire control in the manager (*k*). As regards control of business.

In no case is a manager appointed by the court to be regarded as the agent or servant of the individual, firm, or company whom he displaces (*l*).

841. Though a receiver and manager appointed by the court acts as an officer of the court, he does not necessarily, by carrying on the business, dispossess the previous owner or occupier of the business premises, unless, perhaps, where he has taken possession by direction of the court. He is to be regarded rather as a custodian or caretaker on behalf of the owners. Thus, he cannot resist a distraint for poor rate, some portion of which is due in respect of a period before his appointment (*m*); nor can he insist on a continuance of a supply of gas or electricity to the premises without paying arrears due to the companies who supply it (*n*). As regards business premises.

842. The appointment of a manager in a debenture-holders' action, since it effects a change in the personality of the employer, operates as a notice of dismissal to the servants of the company (*o*), and may give rise, in the case of any servant whose services are not retained by the manager, to a claim against the company for damages for wrongful dismissal or breach of contract (*p*); but it does not affect the position of directors or disentitle them to their ordinary remuneration (*q*). As regards servants of the company and directors.

(*k*) *Moss Steamship Co., Ltd.* v. *Whinney*, [1912] A. C. 254; *Minford* v. *Carse*, [1912] 2 I. R. 245, 273; *Parsons* v. *Sovereign Bank of Canada* (1912), 29 T. L. R. 38; and see p. 403, *ante*.

(*l*) *De Grelle, Houdret & Co.* v. *Bull* (1894), 10 R. 97; *Burt, Boulton and Hayward* v. *Bull*, [1895] 1 Q. B. 276, 279, C. A.; *Re Newdigate Colliery Co., Ltd., Newdegate* v. *The Co.*, [1912] 1 Ch. 468, 470, C. A. Service of a bankruptcy notice on a receiver and manager appointed in a partnership action is not good service within r. 260 of the Bankruptcy Rules, 1890, as having been made on a person having the control or management of the partnership business (*Re Flowers & Co.*, [1897] 1 Q. B. 14, C. A.).

(*m*) *Re Marriage, Neave & Co., North of England Trustee, Debenture and Assets Corporation* v. *Marriage, Neave & Co.*, [1896] 2 Ch. 663, C. A., distinguishing *Richards* v. *Kidderminster Overseers, Richards* v. *Kidderminster (Mayor)*, [1896] 2 Ch. 212 (where the receiver and manager had been appointed out of court under the provisions of a debenture trust deed); and see *De Montmorency* v. *Pratt* (1849), 12 I. Eq. R. 411.

(*n*) *Paterson* v. *Gas Light and Coke Co.*, [1896] 2 Ch. 476, C. A.; *Husey* v. *London Electric Supply Corporation*, [1902] 1 Ch. 411, C. A.

(*o*) *Reid* v. *Explosives Co.* (1887), 19 Q. B. D. 264, C. A.; though not necessarily of all servants (*Reid* v. *Explosives Co., supra*, at p. 269; *Parsons* v. *Sovereign Bank of Canada, supra*, at p. 40); see also *Midland Counties District Bank, Ltd.* v. *Attwood*, [1905] 1 Ch. 357, 362; *Robinson Printing Co., Ltd.* v. *Chic, Ltd.*, [1905] 2 Ch. 123, 134; *Measures Brothers, Ltd.* v. *Measures*, [1910] 2 Ch. 248, 256, C. A.; and see titles COMPANIES, Vol. V., p. 381; MASTER AND SERVANT, Vol. XX., p. 95.

(*p*) *Reid* v. *Explosives Co., supra*; *Measures Brothers, Ltd.* v. *Measures*, [1910] 1 Ch. 336, 344; *Parsons* v. *Sovereign Bank of Canada, supra*. But dismissal by a receiver does not release a servant from covenants against trade competition which have been imposed for the protection of goodwill (*Welstead* v. *Hadley* (1904), 21 T. L. R. 165, C. A.).

(*q*) *Re South Western of Venezuela (Barquisimeto) Rail. Co.*, [1902] 1 Ch. 701.

SECT. 2.
Effect of Appointment.

It would seem that the appointment of a receiver and manager of a business would not generally operate to determine trade contracts (*r*).

As regards trade contracts.

843. As a rule the same person is appointed both receiver and manager (*s*), but the office of manager, in view of the power of expenditure with which he is invested, is generally limited in point of time (*t*), according to the modern practice, to three months.

Duration of office.

SECT. 3.—*Powers.*

Power of carrying on business.

844. The manager, by virtue of his appointment, has power to buy and sell, to discharge outgoings, to engage and dismiss workmen and servants (*u*), to provide for the payment of current expenses (*a*), and, unless expressly prohibited, to enter into fresh contracts in the usual course of business (*b*). He must carry on the business in the usual way, but without entering into any speculative dealings (*c*) or undertakings in which his personal interest may conflict with his duty (*d*).

Protection of goodwill and assets.

It is his duty to preserve the goodwill as well as the assets of the business, and he is not allowed, therefore, as a rule, to disregard contracts entered into before his appointment, even though the assets could be realised to much greater advantage if contracts were disregarded (*e*); but the court does not sanction the borrowing of large sums of money to complete contracts from which no direct profit can result (*f*). For the protection of goodwill a receiver and manager may properly bind his employees, within legal limits, not to compete in business (*g*). A receiver and manager appointed by the court on behalf of secured creditors has no power in the course of business to charge the assets in favour of unsecured creditors so as to give them priority, nor will he be estopped from denying the validity of his act, if he gives such a charge (*h*).

Delivery of books.

845. A receiver and manager is entitled to an order for delivery

(*r*) *Parsons* v. *Sovereign Bank of Canada* (1912), 29 T. L. R. 38, at pp. 39, 40; see *Re British Tea Table Co.* (1897), *Ltd.*, *Pearce* v. *The Co.* (1910), 101 L. T. 707 (payment of solicitor out of money in his hands).

(*s*) *Collins* v. *Barker*, [1893] 1 Ch. 578, 585. For an instance in which different persons were appointed, see *Tempest* v. *Ord* (1816), 2 Mer. 55.

(*t*) *Day* v. *Sykes, Walker & Co., Ltd.* (1886), 55 L. T. 763.

(*u*) *Welstead* v. *Hadley* (1904), 21 T. L. R. 165, C. A.; *Taylor* v. *Neate* (1888), 39 Ch. D. 538; *Howard* v. *Danner* (1901), 17 T. L. R. 548.

(*a*) *Re Manchester and Milford Rail. Co., Ex parte Cambrian Rail. Co.* (1880), 14 Ch. D. 645, 648, 653, C. A.

(*b*) The powers of management are often limited to contracts subsisting at the date of appointment (*Strapp* v. *Bull, Sons & Co.*, *Shaw* v. *London School Board*, [1895] 2 Ch. 1, C. A.), or to contracts not involving more than a certain expenditure (*Taylor* v. *Neate*, *supra*, at p. 545).

(*c*) *Taylor* v. *Neate*, *supra*, at p. 544; *Re British Power Traction and Lighting Co., Ltd., Halifax Joint Stock Banking Co., Ltd.* v. *British Power Traction and Lighting Co., Ltd.* (No. 2), [1907] 1 Ch. 528, 535.

(*d*) *Re Eastern and Midlands Rail. Co.* (1890), 90 L. T. Jo. 20.

(*e*) *Re Newdigate Colliery Co., Ltd., Newdegate* v. *The Co.*, [1912] 1 Ch. 468, C. A.

(*f*) *Re Thames Ironworks Shipbuilding and Engineering Co., Ltd., Farmer* v. *The Co.* (1912), 106 L. T. 674.

(*g*) *Howard* v. *Danner*, *supra*.

(*h*) *Moss Steamship Co., Ltd.* v. *Whinney*, [1912] A. C. 254, 266, *per* Lord ATKINSON.

of all books relating to the conduct of the business (*i*); but a receiver and manager appointed in a debenture-holders' action cannot insist on retaining such books as against a liquidator, where the business and management have come to an end (*k*).

Sub-manager.

846. A manager is frequently authorised to appoint a sub-manager or to employ agents to conduct the business under his supervision (*l*).

Borrowing.

847. A manager is authorised to borrow money when required for the proper conduct of the business (*m*), and to give a first charge on the assets for the amount (*n*); but in general he has no power to charge assets except by leave of the court (*o*), and borrowing will not be sanctioned, even for the completion of existing contracts, if it is apparent that no direct profit can result (*p*).

Advances.

A manager is also often authorised to advance money of his own for the purpose of the business, and in such case the court generally gives him a charge on the assets for the amount of the advance with interest at 5 per cent. (*q*), but expenditure on any particular object will not be sanctioned unless the court is satisfied that it is likely to promote an advantageous sale (*r*).

SECT. 4.—*Right to Indemnity.*

Nature of right.

848. A manager is entitled to an indemnity out of assets against all expenses and liabilities properly incurred in the execution of his duty (*s*), and he may enforce such indemnity even after his discharge (*t*), and expenses and liabilities *bonâ fide* incurred in the ordinary course of business are *primâ facie* treated as having been properly incurred (*a*); but a receiver and manager who has

(*i*) 1 Seton, Judgments and Orders, 7th ed., p. 728; see p. 390, *ante*.

(*k*) *Engel* v. *South Metropolitan Brewing and Bottling Co.*, [1892] 1 Ch. 442; *Boehm* v. *Goodall*, [1911] 1 Ch. 155, 156.

(*l*) See the orders in *Porter* v. *Corbett* (1899) and *Treby* v. *Tilley* (1900), set out in 1 Seton, Judgments and Orders, 6th ed., pp. 756—757 (see 7th ed., p. 731); *Re Herricks, Minors* (1853), 3 I. Ch. R. 183, 185.

(*m*) *Lathom* v. *Greenwich Ferry Co.* (1895), 72 L. T. 790; *Milward* v. *Avill and Smart, Ltd.*, [1897] W. N. 162.

(*n*) *Re British Power Traction and Lighting Co., Ltd., Halifax Joint Stock Banking Co., Ltd.* v. *British Power Traction and Lighting Co., Ltd.*, [1906] 1 Ch. 497; *Re Glasdir Copper Mines, Ltd., English Electro-Metallurgical Co., Ltd.* v. *Glasdir Copper Mines, Ltd.*, [1906] 1 Ch. 365; *Re Boynton (A.), Ltd., Hoffmann* v. *Boynton (A.), Ltd.*, [1910] 1 Ch. 519; *Boehm* v. *Goodall*, [1911] 1 Ch. 155; *Re Newdigate Colliery Co., Ltd., Newdegate* v. *The Co.*, [1912] 1 Ch. 468, 474, C. A.

(*o*) *Moss Steamship Co., Ltd.* v. *Whinney*, [1912] A. C. 254.

(*p*) *Re Thames Ironworks Shipbuilding and Engineering Co., Ltd., Farmer* v. *The Co.* (1912), 106 L. T. 674.

(*q*) *Re Bushell, Ex parte Izard* (No. 1) (1883), 23 Ch. D. 75, 80, C. A.

(*r*) *Securities and Properties Corporation, Ltd.* v. *Brighton Alhambra, Ltd.* (1893), 62 L. J. (CH.) 566.

(*s*) *Burt, Boulton and Hayward* v. *Bull*, [1895] 1 Q. B. 276, C. A.; *Strapp* v. *Bull, Sons & Co., Shaw* v. *London School Board*, [1895] 2 Ch. 1, C. A.; see *Scott* v. *Nesbitt* (1808), 14 Ves. 438, 444; *Fraser* v. *Burgess* (1860), 13 Moo. P. C. C. 314, 344; and see title COMPANIES, Vol. V., p. 381.

(*t*) *Levy* v. *Davis*, [1900] W. N. 174.

(*a*) *Re British Power Traction and Lighting Co., Ltd., Halifax Joint Stock Banking Co., Ltd.* v. *British Power Traction and Lighting Co., Ltd., supra*, at p. 505.

SECT. 4. **Right to Indemnity.**

made default in paying into court a balance found due from him cannot *pro tanto* claim an indemnity without making good the default (*b*). The indemnity is in all cases limited to the assets under the control of the court (*c*).

Liabilities in excess of authority.

If he incurs liabilities to any extent without the previous sanction of the court or in excess of the limit of any borrowing powers conferred on him by the court, he is not entitled to an indemnity unless he satisfies the court that such liabilities were in each case properly and reasonably incurred, and that he was justified in incurring them without first applying for leave; it is not sufficient for him to show that they were incurred *bonâ fide* and in the ordinary course of business (*d*).

The creditors of the receiver and manager will be entitled to be subrogated to him in respect of any right of indemnity he may have against the assets (*e*), unless it appears that he did not intend to pledge his credit and that they did not rely upon it (*f*); but they can have no better right than the receiver himself, and if, in consequence of default in paying in his balances, the receiver is entitled only to a partial indemnity, the creditors must look to the receiver personally for any balance of their debts which they are unable to recover out of assets (*g*).

SECT. 5.—*Remuneration and Discharge.*

Form of remuneration.

849. The remuneration of a manager is paid in the same way as that of a receiver, either by a percentage on gross receipts, or by an annual salary, or by a lump sum (*h*); and, as in the case of a receiver, additional remuneration may be allowed for extraordinary services outside the normal scope of his employment (*i*).

The manager of a West Indian estate, though not entitled during his absence from the island to charge commission, is yet entitled to be allowed all such sums as he has reasonably paid to others to whom he has entrusted the management (*j*).

(*b*) *Re British Power Traction and Lighting Co., Ltd., Halifax Joint Stock Banking Co., Ltd.* v. *British Power Traction and Lighting Co., Ltd.*, [1910] 2 Ch. 470.

(*c*) *Boehm* v. *Goodall*, [1911] 1 Ch. 155.

(*d*) *Re British Power Traction and Lighting Co., Ltd., Halifax Joint Stock Banking Co., Ltd.* v. *British Power Traction and Lighting Co., Ltd.*, [1906] 1 Ch. 497; *Re British Power Traction and Lighting Co., Ltd., Halifax Joint Stock Banking Co., Ltd.* v. *British Power Traction and Lighting Co., Ltd.* (No. 2), [1907] 1 Ch. 528; *Re London United Breweries, Ltd., Smith* v. *London United Breweries, Ltd.*, [1907] 2 Ch. 511. As to the personal liability of a manager on contracts entered into by him, see p. 402, *ante*.

(*e*) *Re British Power Traction and Lighting Co., Ltd., Halifax Joint Stock Banking Co., Ltd.* v. *British Power Traction and Lighting Co., Ltd., supra; Re London United Breweries, Ltd., Smith* v. *London United Breweries, Ltd., supra.*

(*f*) *Re Boynton (A.), Ltd., Hoffmann* v. *Boynton (A.), Ltd.*, [1910] 1 Ch. 519.

(*g*) *Re British Power Traction and Lighting Co., Ltd., Halifax Joint Stock Banking Co., Ltd.* v. *British Power Traction and Lighting Co., Ltd., supra.*

(*h*) *Re South Western of Venezuela (Barquisimeto) Rail. Co.*, [1902] 1 Ch. 701, 703.

(*i*) *Harris* v. *Sleep*, [1897] 2 Ch. 80, C. A.

(*j*) *Forrest* v. *Elwes* (1816), 2 Mer. 68, 69.

Discharge.

850. The rules applicable to the discharge of a receiver apply equally to the discharge of a manager, and where the two offices are combined in one person, as is usually the case, his powers of management may be discharged by order of the court without affecting his position as receiver (*k*), or leave may be given him to vacate the business premises (*l*). Such an order is not, however, often required, for powers of management come to an end automatically at the expiration of the limited period for which they are granted, unless they are expressly renewed (*m*).

(*k*) *Morris* v. *Baker* (1903), 73 L. J. (CH.) 143.

(*l*) *Re Maryport Hematite Iron and Steel Co., Cumberland Union Banking Co.* v. *Maryport Hematite Iron and Steel Co.*, [1892] 1 Ch. 415, 420, 426; *Re London United Breweries, Ltd., Smith* v. *London United Breweries, Ltd.*, [1907] 2 Ch. 511, 512.

(*m*) *Davies* v. *Vale of Evesham Preserves, Ltd.* (1895), 43 W. R. 646.

RECEIVING ORDER.

See BANKRUPTCY AND INSOLVENCY.

RECEIVING STOLEN GOODS.

See CRIMINAL LAW AND PROCEDURE.

RECITALS.

See DEEDS AND OTHER INSTRUMENTS.

RECOGNISANCES.

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RECONVEYANCE.

See MORTGAGE.

RECORDER.

See MAGISTRATES.

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RECREATION GROUNDS.

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See MISTAKE; SETTLEMENTS.

RECTOR AND RECTORY.

See ECCLESIASTICAL LAW.

REDEMPTION.

See EQUITY; MORTGAGE; PAWNS AND PLEDGES.

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See ARBITRATION.

REFORMATORIES.

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See INNS AND INNKEEPERS; INTOXICATING LIQUORS; REVENUE; SALE OF GOODS; TRADE AND TRADE UNIONS.

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REGISTRATION OF BIRTHS, MARRIAGES, AND DEATHS.

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Part I.—Central and Local Registration Authorities.

SECT. 1.—*The General Register.*

SUB-SECT. 1.—*The Office.*

The General Register Office.

851. The General Register Office is the name of the office provided for keeping a register of all births, marriages, and deaths in England (*a*), and it may be situate in any place which, in the opinion of the Treasury, is most convenient for the purpose (*b*).

The officials.

The appointment of the officials, clerks, and servants necessary to carry on the business of the office, and their salaries (*c*), are under the direction of the Treasury, or of the Registrar-General subject to the approval of the Treasury (*d*).

Registers kept at the General Register Office.

852. At the General Register Office are kept the certified copies of the registers of births, marriages, and deaths in England and Wales since the 1st July, 1837 (*e*); the returns of births and deaths

(*a*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 2. For the history of the registration of births, marriages and deaths in England, prior to 1837, see Hammick, Marriage Law of England; and see title EVIDENCE, Vol. XIII., p. 533.

(*b*) General Register Office Act, 1852 (15 & 16 Vict. c. 25). Every office or place where any registers, being in the custody of the Registrar-General, are deposited under his direction is deemed to be part of the General Register Office (Non-parochial Registers Act, 1840 (3 & 4 Vict. c. 92), s. 3).

(*c*) As to the mode of providing payment, see the Public Revenue and Consolidated Fund Charges Act, 1854 (17 & 18 Vict. c. 94), ss. 1, 6, 7; and, as to the Treasury, see title REVENUE, pp. 539, 540, *post*.

(*d*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 3. The regulation of their duties is under the direction of the Local Government Board, or of the Registrar-General, subject to the approval of the Local Government Board (*ibid.*, s. 5; Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 44; Local Government Act, 1871 (34 & 35 Vict. c. 70), s. 2, Sched. I.).

(*e*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 2. From 1837 to 1874 registration of births and deaths was voluntary;

on board His Majesty's ships and on board British vessels (*f*); the registers of births and deaths in the Ionian Islands (*g*); a large number of non-parochial registers (*h*); the Army Returns (*i*); the registers of marriages of British subjects in foreign countries solemnised by British consuls or other marriage officers (*k*); the registers of marriages in India solemnised in the presence of registrars and licensed ministers (*l*); the registers of marriages of British subjects solemnised in the Ionian Islands (*m*); the register of certified places of worship (*n*); the Fleet registers, miscellaneous home and foreign registers, and the register of marriages of British subjects solemnised on board His Majesty's ships (*o*).

SUB-SECT. 2.—*The Registrar-General.*

Appointment.

853. The Registrar-General is appointed by the Crown under the Great Seal of the United Kingdom (*p*), and is subject to such regulations as may from time to time be passed by the Local Government Board for the management of the General Register Office (*q*).

the Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), made it compulsory. A detailed list of all registers, documents and records kept at the General Register Office may be obtained free of charge from the Registrar-General.

(*f*) For the registration of births and deaths at sea, see pp. 457 *et seq.*, *post.*

(*g*) See title EVIDENCE, Vol. XIII., p. 535.

(*h*) These were deposited in the custody of the Registrar-General in consequence of the Non-parochial Registers Act, 1840 (3 & 4 Vict. c. 92), and the Births and Deaths Registration Act, 1858 (21 & 22 Vict. c. 25); and see title EVIDENCE, Vol. XIII., pp. 538, 539.

(*i*) For the registration of marriages of officers and soldiers abroad, see note (*d*), p. 454, *post;* for the registration of births and deaths with reference to troops abroad, see p. 458, *post.* The Army Returns include many regimental, garrison and station registers, and chaplains' returns.

(*k*) As to the registration of marriages abroad, see pp. 454 *et seq.*, *post.*

(*l*) These registers refer only to such marriages as to which the Governor-General in Council considers it desirable that evidence should be transmitted to England, and do not include marriages solemnised by clergymen of the Church of England. Certificates of baptisms, marriages and burials of European British subjects in India since 1698 may be obtained at the India Office; and see titles EVIDENCE, Vol. XIII., p. 535; HUSBAND AND WIFE, Vol. XVI., p. 307.

(*m*) *I.e.*, a record of marriages of British subjects solemnised between 1861 and 1864, after which date the protectorate was relinquished by Great Britain.

(*n*) It is the duty of the Registrar-General to make and print lists of all chapels and registered buildings, to keep the returns of certified places of worship, and to allow searches in such returns (Marriage Act, 1836 (6 & 7 Will. 4, c. 85), ss. 18, 35; Marriage and Registration Act, 1856 (19 & 20 Vict. c. 119), s. 24; Places of Religious Worship Registration Act, 1855 (18 & 19 Vict. c. 81); and see titles CHARITIES, Vol. IV., p. 245; ECCLESIASTICAL LAW, Vol. XI., p. 817.

(*o*) As to the registration of marriages on His Majesty's ships, see pp. 454, 455, *post;* and see titles HUSBAND AND WIFE, Vol. XVI., p. 296; ROYAL FORCES.

(*p*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 2. His salary is a sum not exceeding £1,200 a year (Births and Deaths Registration Act, 1858 (21 & 22 Vict. c. 25), s. 4).

(*q*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 5; Local Government Act, 1871 (34 & 35 Vict. c. 70), s. 2, Sched. I.; and see title CONSTITUTIONAL LAW, Vol. VII., p. 104.

SECT. 1. The General Register.

Duties as to registration.

854. It is the duty of the Registrar-General generally to supervise and direct the registration of births, marriages, and deaths in England and Wales (*r*); and to make, subject to the approval of the Local Government Board, regulations for the management of the General Register Office and for the staff thereof, and for the superintendent registrars, registrars, and deputy registrars (*s*). Such regulations have the same force as if they were enacted by Act of Parliament (*t*).

Custody of registers and indexes.

855. The Registrar-General is also responsible for the custody of all registers and records deposited at the General Register Office, and he must cause indexes to be made of all the registers and records in his custody (*a*), and all certified copies of entries given at the General Register Office to be sealed with the official seal of the General Register Office (*b*).

Provision of registers and safes.

856. It is the duty of the Registrar-General to cause to be printed (*c*), and to furnish to every superintendent registrar for the use of the registrars under his superintendence, and to every person on whom the duty of registering marriages is imposed, including marriage and consular officers abroad, a sufficient number of register books for making entries of all births, marriages, and deaths, and of forms of certified copies thereof (*d*), and to provide, for the use of the registrars for the custody of the registers, strong iron boxes fitted with locks and two keys for each lock (*e*).

Quarterly and annual returns.

857. The Registrar-General must appoint the days on which the certified copies of entries of births, marriages, and deaths are sent quarterly in every year, by every registrar and by every person whose duty it is to register marriages, to the superintendent registrar of the district (*f*), and by every superintendent registrar

(*r*) He may appoint an assistant, by writing under his hand, subject to the approval of the Treasury, to act in the case of illness (Births and Deaths Registration Act, 1837 (7 Will. 4 & 1 Vict. c. 22), s. 15).

(*s*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 5; Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 44.

(*t*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 44.

(*a*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 37.

(*b*) *Ibid.*, s. 38.

(*c*) *Ibid.*, s. 17; and see p. 445, *post.*

(*d*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), ss. 18, 30 (clergymen of the Church of England, registering officers of the Society of Friends, and secretaries of synagogues); Marriage and Registration Act, 1856 (19 & 20 Vict. c. 119), s. 22 (secretaries of West London Synagogue and synagogues connected therewith); Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 17, and Marriage Act, 1836 (6 & 7 Will. 4, c. 85), s. 23 (registrars of marriage); Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 7 (2) (authorised persons or trustees and governing body (including in the case of Roman Catholic registered buildings the bishop or vicar-general of the diocese (*ibid.*, s. 1 (3)) of nonconformist registered buildings in which marriages may be solemnised without the presence of a registrar). Marriage register books, except in the case of registrars of marriage, must be supplied in duplicate (*ibid.*, s. 7 (2)); and, as to the registers, see pp. 445, 446, *post.*

(*e*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 14; and, as to the custody of registers, see pp. 447, 448, *post.*

(*f*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), ss. 32

to the Registrar-General (*g*), and must send annually, to the Local Government Board, an abstract of the records thus obtained in order that they may be laid before Parliament (*h*).

Information from census returns.

858. The Registrar-General may, if he thinks fit, furnish such statistical information as any local authority or any person may reasonably require which can be derived from the census returns, but which is not supplied by the census report (*i*).

SECT. 2.—*Registration Districts.*

SUB-SECT. 1.—*Boundaries and Alterations of Districts.*

Division into districts.

859. The registration of births, marriages, and deaths is effected by the division of England into districts and sub-districts (*k*), and by the appointment of a superintendent registrar and registrars of marriages for each district (*l*), and a registrar of births and deaths for each sub-district (*m*).

Alteration of districts.

860. The Registrar-General, with the sanction of the Local Government Board, has power to alter any district either by the alteration of boundaries (*n*), or by the division of districts into new

33 (clergymen of the Church of England, registering officers of the Society of Friends, and secretaries of synagogues); Marriage and Registration Act, 1856 (19 & 20 Vict. c. 119), s. 22 (secretaries of West London Synagogue and synagogues connected therewith); Marriage Act, 1836 (6 & 7 Will. 4, c. 85), s. 24, Sched. D (registrars of marriage); Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 11 (1); Stat. R. & O., 1909, pp. 527, 542, Section VIII. (authorised persons for nonconformist registered buildings in which marriages may be solemnised without the presence of a registrar).

(*g*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 34.

(*h*) *Ibid.*, s. 6; Local Government Act, 1871 (34 & 35 Vict. c. 70), s. 2, Sched. I.

(*i*) Census (Great Britain) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 27), s. 9. As to the census generally, see title CONSTITUTIONAL LAW, Vol. VI., pp. 343 *et seq.*

(*k*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 7. These districts were created by the obligation imposed upon the guardians of every union (see title POOR LAW, Vol. XXII., pp. 530 *et seq.*, 553 *et seq.*), and of every parish or place in which a board of guardians was established, to divide the union, parish or place into such and so many districts as they might, subject to the approval of the Registrar-General, think fit (Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), ss. 7, 10, 11; Births and Deaths Registration Act, 1901 (1 Edw. 7, c. 26)). As to the formation into temporary districts of parishes and townships for which a board of guardians had not been established, see Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), ss. 10, 11.

(*l*) *Ibid.*, s. 7; Marriage Act, 1836 (6 & 7 Will. 4, c. 85), s. 17; Marriage and Registration Act, 1856 (19 & 20 Vict. c. 119), s. 15; and see pp. 440, 441, *post.* The superintendent registrar's districts and the poor law unions normally coincide in area, the only exceptions being the superintendent registrars' districts of Anglesea, Bradford, Chester, Dorchester, Hatfield, Hayfield, Helmsley, Hereford, Kensington, Lewes, Royston, Stockton, Winchester, Wolverhampton, and Wortley, which comprise the areas of two or more unions. The Scilly Islands, which are not in any union, form a separate superintendent registrar's district (Stat. R. & O., Index, 6th ed., p. 683, note).

(*m*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 7.

(*n*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 21.

SECT. 2. Registration Districts.

districts (*o*), or by the union of two or more districts into one district (*p*).

Superintendent registrar's office and safe.

861. Every board of guardians must provide a register office (*q*), and furnish it with a fire-proof repository (*r*) for the safe custody of the registers deposited with the superintendent registrar of the district (*s*). Until a register office is provided, the superintendent registrar must appoint some fit room as a temporary register office, a reasonable rent for which must be paid by the guardians (*t*).

Guardians may, if necessary, borrow money for providing a register office (*a*); and if they neglect or refuse to provide one, the Commissioners of the Treasury may erect an office at a cost not exceeding £300, and charge the same to the board of guardians (*b*).

The superintendent registrar's office is to be taken to be within the district of which it is the register office, although not locally situated therein (*c*).

SUB-SECT. 2.—*Registrars.*

Appointment.

862. Every board of guardians must appoint (*d*) a superintendent registrar (*e*), and a registrar of births and deaths within each district, and fill up such vacancies as may from time to time occur (*f*). In case of non-appointment within fourteen days of the

(*o*) Births and Deaths Registration Act, 1837 (7 Will. 4 & 1 Vict. c. 22), s. 11; Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 22.

(*p*) Births and Deaths Registration Act, 1837 (7 Will. 4 & 1 Vict. c. 22), s. 10; Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 22. The Registrar-General has power, with the consent of the Local Government Board, to include extra-parochial places in register districts (Births and Deaths Registration Act, 1837 (7 Will. 4 & 1 Vict. c. 22), s. 9; Local Government Board Act, 1871 (34 & 35 Vict. c. 70), s. 2, Sched. I.). Every alteration in a register district is published in the *London Gazette*, or otherwise advertised as the Local Government Board may direct (Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 21). Any superintendent registrar or registrar deprived of his office or part of his emoluments by such alteration is entitled to compensation (Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 21).

(*q*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 9.

(*r*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 33.

(*s*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 9.

(*t*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 33.

(*a*) Births and Deaths Registration Act, 1837 (7 Will. 4 & 1 Vict. c. 22), s. 19.

(*b*) *Ibid.*, s. 20.

(*c*) *Ibid.*, s. 12.

(*d*) The appointments of superintendent registrars, registrars etc., are exempt from stamp duties (Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 13). As to stamp duties, see title REVENUE, pp. 700 *et seq.*, *post.*

(*e*) Every superintendent registrar of births and deaths is, in right of his office, superintendent registrar of marriages within the district of which he is superintendent registrar of births and deaths (Marriage Act, 1836 (6 & 7 Will. 4, c. 85), s. 3). For persons (other than registrars of marriage) on whom the duty of registering marriages is imposed, see pp. 452—455, *post.* For duties of superintendent registrars with reference to marriages, see title HUSBAND AND WIFE, Vol. XVI., pp. 291, 292, 295, 300, 305, 306.

(*f*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 7. A clerk to the guardians need not necessarily be appointed to the office of superintendent registrar, although this was otherwise in the case of an appointment first made under the Act (*R.* v. *Acason* (1862), 2 B. & S. 795).

office becoming vacant, the appointment lapses to the Registrar-General (*g*).

Registrars of marriages are appointed by the Registrar-General or by a superintendent registrar subject to the approval of the Registrar-General (*h*).

Deputy superintendent registrar.

863. Every superintendent registrar (*i*) must appoint by writing, subject to the approval of the Registrar-General, a deputy to act in case of illness or unavoidable absence, and the deputy has all the powers and is subject to all the duties and obligations of the superintendent registrar whose deputy he is, the superintendent registrar being civilly responsible for his acts or omissions (*k*).

Tenure of office.

A deputy holds office during the pleasure of the superintendent registrar by whom he is appointed, but subject to removal by the Registrar-General (*l*). If a superintendent registrar dies, resigns, or otherwise ceases to hold office, his deputy succeeds him as *interim* superintendent registrar, with all the powers and duties of a superintendent registrar, until another superintendent registrar is duly appointed (*m*).

Duty of registrar to register births.

864. Every registrar of births and deaths must inform himself carefully of every birth which happens in his sub-district, and upon personally receiving from the informant, within three months of the birth of any child or the finding of any living new-born child,

No clerk or officer of a union who has been dismissed, nor superintendent registrar or registrar who has been removed from his office by the Registrar-General, is eligible for office (Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 8). No superintendent registrar or registrar may be a member of the board of guardians appointing him, nor may he have been a member within six months of his appointment (General Rule, May, 1905). A woman may fill the post of registrar of births and deaths, but not that of superintendent registrar or registrar of marriages (*ibid.*). Superintendent registrars and registrars of births and deaths, but not registrars of marriages, may be compulsorily retired at the age of sixty-five (Poor Law Officers' Superannuation Act, 1896 (59 & 60 Vict. c. 50), ss. 2, 19); and see titles POOR LAW, Vol. XXII., pp. 546, 547; PUBLIC AUTHORITIES AND PUBLIC OFFICERS, Vol. XXIII., pp. 352 *et seq.*

(*g*) Births and Deaths Registration Act, 1837 (7 Will. 4 & 1 Vict. c. 22), s. 14. The acting as registrar of births and deaths is *primâ facie* evidence of proper appointment to the office under the Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 7 (*R.* v. *Price* (1840), 3 Per. & Dav. 421).

(*h*) Marriage Act, 1836 (6 & 7 Will. 4, c. 85), s. 17; Marriage and Registration Act, 1856 (19 & 20 Vict. c. 119), s. 16. The number of registrars of marriages is unlimited, but the Registrar-General has power to limit the number of registrars of marriages to be appointed by any superintendent registrar (Births and Deaths Registration Act, 1837 (7 Will. 4 & 1 Vict. c. 22), s. 22).

(*i*) Every registrar of births and deaths and every registrar of marriages has the same powers as a superintendent registrar to appoint a deputy, and every deputy registrar has the same powers and is subject to the same duties and obligations, when acting, as the registrar (Marriage and Registration Act, 1856 (19 & 20 Vict. c. 119), s. 16; Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 24).

(*k*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 24.

(*l*) *Ibid.*, s. 24.

(*m*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 25 and see p. 440, *ante*. Where there is no deputy to act as *interim* registrar, the Registrar-General has power, on the death of a registrar, to appoint an *interim* registrar (*ibid.*).

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the information required to be registered, must register the same in the register provided for the purpose, and must, on demand at the time of registration by the informant, give a certificate of having registered such birth (*n*). Every such registrar who refuses, or without reasonable cause omits, to register any birth is liable to a penalty not exceeding £50 (*o*).

Duty of registrar to send vaccination notice.

865. Every registrar of births and deaths must, within seven days after the registration of the birth of any child, send to the parent or other person who has registered the birth a notice requiring the child to be vaccinated (*p*); and minutes of all such notices are entered by the registrar in a book especially provided for the purpose (*q*).

Returns to local education authority.

866. Every registrar of births and deaths must transmit, when required by a local education authority, a return of such particulars registered by him of the births and the deaths of children under the age of fourteen as the authority may specify (*r*).

Duty to register deaths.

867. Every registrar of births and deaths must inform himself carefully of every death which takes place within his sub-district, and upon personally receiving from the informant, within twelve months of any death or the finding of any dead body, the information required to be registered, must register the same in the register provided for the purpose (*s*). Every registrar who refuses, or without reasonable cause omits, to register any death is liable to a penalty not exceeding £50 (*t*).

Notices and returns to be given by registrar.

Where the deceased person is a dentist, or a member of the medical profession, or a chemist or a druggist, or a veterinary surgeon, every registrar of deaths must give notice of death to the registrar of that body of which the deceased was a registered member (*a*).

Every registrar of births and deaths whose sub-district includes

(*n*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), ss. 4, 30. The fee for such certificate must not exceed 3*d*. (*ibid.*).

(*o*) *Ibid.*, s. 35. This penalty is recoverable on summary conviction (*ibid.*, s. 45). As to procedure before courts of summary jurisdiction, see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.*

(*p*) Vaccination Act of 1867 (30 & 31 Vict. c. 84), s. 15. The registrar is entitled to a fee of 1*d*. for every such notice (*ibid.*, s. 24). For form of notice, see Vaccination Orders, 1907, Stat. R. & O., 1907, pp. 1052, 1064.

(*q*) Vaccination Act of 1867 (30 & 31 Vict. c. 84), s. 24; and see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 474, 475. It is the duty of every registrar to send at least once a month a list of births, and of deaths of infants under twelve months, to the vaccination officer of the district (Vaccination Act, 1871 (34 & 35 Vict. c. 98), s. 8). The registrar is entitled to a fee of 2*d*. for every birth or death entered in the return (*ibid.*). The fees are paid quarterly by the guardians of the district of which he is registrar, on the submission by the registrar of his account (Vaccination Act of 1867 (30 & 31 Vict. c. 84), s. 25).

(*r*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 26. The fee for such information must not exceed 2*d*. for every entry (*ibid.*); and see title EDUCATION, Vol. XII., p. 66.

(*s*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 14.

(*t*) *Ibid.*, s. 35. This penalty is recoverable on summary conviction (*ibid.*, s. 45).

(*a*) See title MEDICINE AND PHARMACY, Vol. XX., pp. 319, 354, 361, 373.

the whole or any part of any parliamentary or municipal borough must furnish the overseers of every parish within his district with a return of the names, ages, and residences of all male persons of full age who have died within that parish, and also, when required, furnish like particulars of all women of full age (*b*).

Every registrar of births and deaths must transmit, when required by a sanitary authority, a return of such of the particulars of deaths registered by him as the authority may specify (*c*).

Every registrar of births and deaths must, when required, attest notices of marriage by adding to the notice his name, description, and place of abode (*d*).

Quarterly account.

868. Every registrar of births and deaths must, four times in every year, make out an account of the number of births and deaths which he has registered since the last account, and this account, after being verified and signed by the superintendent registrar, is presented by the registrar to the guardians of the district of which he is registrar, who pay him at the rate of 2*s.* 6*d.* for each of the first twenty entries in each quarterly account, and 1*s.* for every subsequent entry (*e*).

Quarterly returns of certified copies.

869. Every registrar of births and deaths, and every person on whom the duty of registering marriages is imposed, must make and deliver to the superintendent registrar (*f*) of the district, in the months of January, April, July, and October of each year, a true copy, certified by him, of all the entries of births, marriages, and deaths in the register books kept by him since the last certificate (*g*),

(*b*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 11; and see title ELECTIONS, Vol. XII., p. 198. The returns are made quarterly in January, April, July, and September (*ibid.*, note (*p*)).

(*c*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 28.

(*d*) Marriage and Registration Act, 1856 (19 & 20 Vict. c. 119), s. 2.

(*e*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 29 Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 31. These fees must be paid by the guardians of the parish or union in which the workhouse is really situated, although not belonging to such parish; and a mandamus lies against the guardians of the parish to which the workhouse belongs if they refuse to repay (*R.* v. *St. Luke's, Shoreditch* (1856), 4 W. R. 230).

(*f*) In the case of clergymen of the Church of England, and of authorised persons (see p. 453, *post*) for registered buildings (Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 11 (4); Stat. R. & O., 1909, p. 527, Section VIII.) the certified copies may be delivered to the registrar of the district, whose duty it is to call for them and to deliver them to the superintendent registrar (Births and Deaths Registration Act, 1837 (7 Will. 4 & 1 Vict. c. 22), s. 29). Every registrar is directed by the superintendent registrar under whose superintendence he is to collect the certified copies quarterly, or oftener, if the superintendent registrar thinks fit or is so ordered by the Registrar-General (*ibid.*).

(*g*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), ss. 32, 33; Marriage Act, 1836 (6 & 7 Will. 4, c. 85), s. 24. The certified copies must, in every case, be made up and refer respectively to the last days of December, March, June, and September, then next preceding (Births and Deaths Registration Act, 1837 (7 Will. 4 & 1 Vict. c. 22), s. 26). Every person whose duty it is to deliver a certified copy or certificate to the superintendent registrar, and who refuses or during one calendar month neglects to do so, is liable to a fine not exceeding £10 (*ibid.*, s. 28). This

SECT. 2. Registration Districts.

and if there has been no entry made since the last certificate that fact must be certified (*h*).

All the certified copies of the registers of births and deaths thus received by the superintendent registrar must be examined with the original registers, and, after having been certified by him as correct copies, must, with the certified copies of the entries of marriages, be sent by him to the Registrar-General four times a year on such days as may be appointed by the Registrar-General (*i*).

Offices and registration stations.

870. Every registrar and deputy registrar must either dwell in or have a known office, and, where so directed by the Registrar-General, one or more stations within his sub-district, where he must attend on the days and at the hours approved by the Registrar-General; and he must place his name and the fact that he is the registrar in a conspicuous part on the outer door of his dwelling-house or office, and state the hours of his attendance (*k*).

Power to prosecute.

Every superintendent registrar may, subject to the prescribed rules, prosecute any person guilty of any statutory offence (*l*) committed within his district, and the costs incurred by him are defrayed out of moneys provided by Parliament (*m*).

Exemptions.

Registrars of births, marriages, and deaths are exempt from every parochial and corporate office (*n*), but are not exempt from serving on juries (*o*).

penalty is recoverable on summary conviction (Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 45).

(*h*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), ss. 32, 33 (clergymen of the Church of England, registering officers of the Society of Friends, and secretaries of synagogues); Marriage and Registration Act, 1856 (19 & 20 Vict. c. 119), s. 22 (secretaries of West London Synagogue and synagogues connected therewith); Marriage Act, 1836 (6 & 7 Will. 4, c. 85), s. 24, Sched. D (registrars of marriage); Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 11 (1), Stat. R. & O., 1909, p. 527, Section VIII. (authorised persons for nonconformist registered buildings in which marriages are solemnised without the presence of a registrar).

(*i*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), ss. 32—34. The certified copies of the registers of marriages before a registrar must be certified in the same way. The certificates and licences for marriage corresponding with the entries must be sent with certified copies of the registers of marriage received from authorised persons for registered buildings (Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 11 (5); Stat. R. & O., 1909, pp. 527, 541, 542, Sections VI., VIII.).

(*k*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 26. A list of registrars and their residences must be kept at the workhouse of every union and at each police station in every union (*ibid.*).

(*l*) *I.e.*, under the Births and Deaths Registration Acts, 1836 (6 & 7 Will. 4, c. 86); 1874 (37 & 38 Vict. c. 88).

(*m*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 23. Prosecutions on indictment for offences under this Act must be commenced within three years after the commission of such offence (*ibid.*, s. 46). All penalties may be recovered on summary conviction, and where a court of summary jurisdiction thinks that proceedings ought to be taken by indictment, the case may be adjourned to enable such proceedings to be taken (*ibid.*, s. 45). As to proceedings before courts of summary jurisdiction, see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.*

(*n*) Births and Deaths Registration Act, 1837 (7 Will. 4 & 1 Vict. c. 22), s. 18. The effect of this provision is limited, inasmuch as it does not render

(*o*) For note (*o*), see the next page.

Part II.—The Registers.

SECT. 1.—*Contents.*

SECT. 1. Contents.

The registers.

871. The registers are books made of durable material, with the heads of information required to be registered printed upon each side of every page (*p*).

Particulars to be registered:

(i.) births;

872. In the case of births the particulars required to be registered are: (1) the date and place (*q*); (2) name (if any) and sex of the child; (3) name and surname and rank, profession, or occupation of the father (*r*); (4) name and maiden surname of the mother; (5) signature, description, and residence of informant; (6) when registered; (7) signature of registrar (*s*); and (8) if the birth takes place at sea, the nationality and last place of abode of the father and mother (*t*).

(ii.) marriages;

In the case of marriages, the particulars required to be registered are: (1) the date; (2) name and surname (*a*), age (*b*), condition,

void the appointment of a registrar of births, marriages and deaths to a parochial office who refuses to serve, unless he appeals against the appointment to the proper tribunal prescribed by the Act (other than this Act), governing the office in question (*R.* v. *Cheshire Justices* (1840), 4 Jur. 484).

(*o*) Juries Act, 1870 (33 & 34 Vict. c. 77), s. 9 and Sched.; and see title JURIES, Vol. XVIII., p. 233, note (*i*).

(*p*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 17. Every page and place of entry is numbered progressively from the beginning to the end, beginning with number one, and every entry is divided from the following entry by a printed line (*ibid.*). As to penalties for the destruction, alteration, or forgery of registers, see title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 741, 742.

(*q*) Where twins are born, the hour of birth may be recorded in order to show which is the elder (Registrar-General's Regulations). In the case of births in prisons since 1901, and in workhouses since 1905, the prison must be entered as an infirmary, and the workhouse must be described by an alternative address given by the guardians, subject to the approval of the Registrar-General (*ibid.*).

(*r*) The father of an illegitimate child must not be entered in the register as the father of the child, except at the joint request of the mother and of himself (Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 7), in which case the register must be signed both by the mother and the father (*ibid.*).

(*s*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), Sched. A; Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 47. The form includes a head for the entry of the name (if any) added after registration of birth. If the Registrar-General thinks fit, the place of birth may be inserted in the register (Births and Deaths Registration Act, 1837 (7 Will. 4 & 1 Vict. c. 22), s. 8); and see p. 446, *post*. For cases where the signature of the superintendent registrar is necessary, see p. 452, *post*.

(*t*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 254, Sched. VIII.

(*a*) If either of the parties has an adopted or reputed name, both that name and the true name should be stated in the register (Stat. R. & O., 1909, p. 537, Section V.). In the case of a person who has obtained a decree of divorce, as being the innocent party in the divorce suit, the condition of such person should on production of the decree be described as "Formerly the husband [*or* wife] of from whom he [*or* she] has obtained a divorce" (Stat. R. & O., 1909, p. 538, Section V.).

(*b*) The precise age of each party should be ascertained by careful

SECT. 1. Contents.

rank, or occupation and residence of each of the parties; and (3) name and surname, rank or profession of the father (*c*) of each of the parties (*d*).

Every entry must show (*e*), in the case of a marriage according to the rites of the Church of England, the church, and the parish and county in which it is situated, and must state whether the marriage has taken place by licence or after banns (*f*).

(iii.) deaths.

In the case of deaths, the particulars required to be registered are: (1) the date; (2) name and surname, sex, age, and rank, profession or occupation of the deceased person; (3) cause of death; (4) signature, description, and residence of informant; (5) signature of registrar (*g*); and (6) if the death took place at sea, the nationality and last place of abode of the deceased (*h*).

Alteration of forms.

873. The Local Government Board, or the Registrar-General with the consent of the Local Government Board, may by order alter the forms in use for registering births, marriages, and deaths, and prescribe new forms (*i*).

inquiry from the party. If the precise age cannot be ascertained, the approximate age must be inserted ("about 30" [or as the case may be]) (Stat. R. & O., 1909, p. 537, Section V.).

(*c*) If there should be any hesitation or reluctance in answering questions under this head (owing to illegitimacy), further inquiry should not be made and columns 7 and 8 should be left blank with lines drawn through them (Stat. R. & O., 1909, p. 538, Section V.).

(*d*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 31, Sched. C (marriages according to the rites of the Church of England, and to the usages of the Society of Friends and of the Jews); Marriage (Society of Friends) Act, 1860 (23 & 24 Vict. c. 18) (marriages according to the usages of the Society of Friends, where only one or neither of the parties is a member of the society); Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 7 (1); Stat. R. & O., 1909, pp. 527, 536, Section V. (nonconformist marriages in registered buildings without the presence of a registrar).

(*e*) Every entry must be made in order from the beginning to the end of the book, the number of the place of entry in each duplicate book being the same (Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 31).

(*f*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), Sched. C. Where a marriage is registered by an authorised person, the entry must show the registered name of the building, the registration district and county in which it is situated, and must state whether the marriage has taken place with or without religious ceremony, the name of the sect according to whose rites the marriage has been solemnised, and whether by certificate or licence. Where the marriage is attended by an authorised person appointed for another registered building in the same district, he must, after his signature and description, add the name of the building for which he is authorised (Stat. R. & O., 1909, p. 540, Section V.). As to the statutory requirements, see, further, title ECCLESIASTICAL LAW, Vol. XI., pp. 705, 706.

(*g*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), Sched. B; Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 47. If the Registrar-General thinks fit, the place of death may be inserted in the register (Births and Deaths Registration Act, 1837 (7 Will. 4 & 1 Vict. c. 22), s. 8).

(*h*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 254, Sched. VIII.

(*i*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 44. Every order must be published in the *London Gazette*, and laid before both Houses of Parliament within fourteen days after the issue of the order (*ibid.*).

SECT. 2.—*Correction of Errors and Alteration of Register of Births.*

SECT. 2. Correction of Errors and Alteration of Register of Births.

874. Any clerical error in the registers of births and deaths may be corrected by any person authorised in that behalf by the Registrar-General (*k*).

In registers of births and deaths.

Any error of fact or substance in the registers of births and deaths may be corrected by the officer in whose custody the register is making an entry in the margin, without any alteration of the original entry, upon payment of the proper fee (*l*), and upon production to him, by the person requiring such error to be corrected, of a statutory declaration stating the nature of the error and the true facts (*m*).

In registers of marriages.

875. Any person charged with the duty of registering marriages may correct any error in the form or substance of any entry in the same way as a clergyman of the Church of England is authorised to do (*n*).

Alteration of register of births.

876. Where the birth of a child is registered without a name, or if the name by which it was registered is altered, the person procuring a name to be given or the first name to be altered may, within twelve months after the registration of the birth, send to the registrar or superintendent registrar a certificate to that effect (*o*). On receipt of such certificate, the registrar must forthwith enter the name in the register book, and send to the Registrar-General the certificate with a statement upon it that such entry has been made, and a certified copy of the entry of the birth with the name so added (*p*).

SECT. 3.—*Custody.*

Custody by registrar.

877. Until the register books are filled, every registrar and every person whose duty it is to register marriages must keep the books, while not in use, safely in strong iron boxes provided for the purpose (*q*).

(*k*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 36.

(*l*) The fee is 2*s.* 6*d.*

(*m*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 36. The declaration must be signed by two persons on whom is imposed the duty of giving information in the case of a birth or death, or, in default, by two credible witnesses having knowledge of the truth of the case. As to correction of errors of fact or substance in the certificates of coroners, see title CORONERS, Vol. VIII., p. 272.

(*n*) See title ECCLESIASTICAL LAW, Vol. XI., p. 705, note (*d*). The marginal note entry must be signed with the date of the month and year when the correction is made (Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 44). As to the correction of errors by authorised persons for registered buildings, see Stat. R. & O., 1909, pp. 527, 536, 539—541, Sections V., VII.

(*o*) Where the name is given or altered by baptism, a certificate signed by the minister or person who performed the rite of baptism must be delivered on payment of a fee not exceeding 1*s.* Where the child is not baptised, such certificate must be signed by the father, mother, guardian, or the person giving or procuring the alteration of the name (Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 8). For form of certificate, see *ibid.*, Sched. I.

(*p*) *Ibid.*, s. 8. The fee for such entry is 1*s.* (*ibid.*, s. 8, Sched. II.); and see, further, title ECCLESIASTICAL LAW, Vol. XI., p. 687.

(*q*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86),

SECT. 3. Custody.

After a register-book is filled, the registrar must deliver it to the superintendent registrar of the district, to be kept by him with the records of his office (*r*).

Custody of marriage registers.

878. The provisions relating to completed marriage registers kept by ministers of the Church of England (*a*) relate to other registers of marriages not kept by a registrar of marriages, except that in the case of marriages according to the usages of the Society of Friends, and of the Jews, the duplicate is kept with their other records and registers (*b*); and, in the case of nonconformist marriages at registered buildings without the presence of a registrar, in the fire-proof safe belonging to the registered building (*c*).

On the death, retirement, or vacation of office from any other cause of an authorised person, the governing body must at once inform the Registrar-General and appoint a successor, who must see, on taking over the keys of the fire-proof safe, that the registers come into his possession (*d*).

Penalty for loss or injury to register.

879. Any person, other than an authorised person for a registered building (*e*), having the custody of any register book who loses or injures it is liable to a penalty not exceeding £50 for each such offence (*f*).

ss. 32, 33; Marriage Act, 1836 (6 & 7 Will. 4, c. 85), s. 24; Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 11 (3). Strong iron boxes must be provided for registrars by the Registrar-General (Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 14), and for authorised persons by the trustee or governing body of the registered building (Stat. R. & O., 1909, pp. 527, 528, Section I.).

(*r*) Marriage Act, 1836 (6 & 7 Will. 4, c. 85), s. 24. When any registrar or superintendent registrar is removed from or ceases to hold office, all register boxes, keys, and books in his possession must be transferred as soon as possible to his successor (Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 15).

(*a*) See title ECCLESIASTICAL LAW, Vol. XI., p. 706. In the case of marriages between parties of whom one at least is a British subject, solemnised in a foreign country, by or before a marriage officer, the register books are, when filled, sent by the marriage officer to a Secretary of State for transmission to the Registrar-General (Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23), s. 10); and see pp. 455, 456, *post*.

(*b*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 33 (clergymen of the Church of England, registering officers of the Society of Friends, and secretaries of synagogues); Marriage and Registration Act, 1856 (19 & 20 Vict. c. 119), s. 22 (secretaries of West London synagogue and synagogues connected therewith). The custody of marriage registers is not affected by the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 17 (8).

(*c*) Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 11 (3); Stat. R. & O., 1909, p. 527, Section I.; and see title HUSBAND AND WIFE, Vol. XVI., p. 301.

(*d*) Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 11 (3); Stat. R. & O., 1909, p. 527, Section II. As to the custody of the registers when a licence authorising the solemnisation of marriages in a chapel is revoked, see title ECCLESIASTICAL LAW, Vol. XI., pp. 706, 707.

(*e*) Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 12.

(*f*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 42; Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 35. This penalty is recoverable on summary conviction (*ibid.*, s. 45); and see title ECCLESIASTICAL LAW, Vol. XI., p. 706, note (*e*).

SECT. 4. *Searches.*

SECT. 4. Searches.

Searches at Somerset House.

880. Any person is entitled, on payment of the proper fee (*g*), to search the indexes at the General Register Office between the hours of ten in the morning and four in the afternoon of every day except Sundays, Christmas Day, and Good Friday, and to have a certified, or, in certain cases, an authenticated (*h*), copy (*i*) of any entry in the registers and records in the custody of the Registrar-General (*k*); and every such certified copy must be sealed or stamped with the seal of the General Register Office (*l*).

Searches of registers with superintendent registrar.

881. Any person is entitled at all reasonable times, on payment of the proper fee (*m*), to search the indexes kept by a

(*g*) The fees are:—For every certified copy of an entry in the registers or for every certified copy of an entry in the certified copies of the registers, 2*s.* 6*d.* (Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), ss. 35, 37 (copies supplied by clergymen of the Church of England, registrars of marriage, registering officers of the Society of Friends, and secretaries of synagogues); Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 32, Sched. II. (copies supplied by a superintendent registrar); Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 7 (5); Stat. R. & O., 1909, pp. 527, 546, Section X. (copies supplied by authorised persons for nonconformist registered buildings in the case of marriages solemnised without the presence of a registrar)). For every general search (*i.e.*, a search during any number of successive hours, not exceeding six, without stating the object of the search) £1, and for every particular search (*i.e.*, a search over any period not exceeding five years for any given entry), 1*s.* (Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 37; Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 32). Certificates of birth at a reduced fee are given under the Elementary Education Act, 1876 (39 & 40 Vict. c. 79), ss. 25, 26 (fee 6*d.*; and see title EDUCATION, Vol. XII., p. 66); Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 134 (fee 6*d.*; and see title FACTORIES AND SHOPS, Vol. XIV., p. 489); the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 97 (fee 1*s.*; and see title FRIENDLY SOCIETIES, Vol. XV., pp. 152, 156, 204); the National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), s. 114 (fee 6*d.*; and see title WORK AND LABOUR); certificates of death under the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 97 (fee 1*s.*; and see title FRIENDLY SOCIETIES, Vol. XV., pp. 152, 156); certificates of births, marriages, and deaths under the Savings Banks Act, 1887 (50 & 51 Vict. c. 40), s. 10 (fee 1*s.*). In cases under the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), the registrar or person having the care of the register is entitled to an additional fee of 3*d.* if he is required to fill up a form of application (*ibid.*, s. 97 (3) (4)).

(*h*) See note (*r*), p. 450, *post.*

(*i*) Every certified copy with the exception of the cheap certificates mentioned in note (*g*), *supra*, must bear a 1*d.* stamp, to be paid by the person requiring the copy (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 64 and Sched.).

(*k*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 37.

(*l*) *Ibid.*, s. 38. As to the admissibility of certificates as evidence, see title EVIDENCE, Vol. XIII., pp. 533, 534.

(*m*) The fees are:—For every general search in the indexes kept by a superintendent registrar, 5*s.*, and for every particular search in such indexes, 1*s.* (Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), ss. 27, 32, Sched. II.); for every search of any current register book extending over a period of not more than one year, 1*s.*; and for every additional year, 6*d.*, to be paid to the person having the custody for the time being of the register book (Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 35 (clergymen of the Church of England, registrars of marriage, registering officers of the Society of Friends, and

SECT. 4. Searches.

superintendent registrar, and to have a certified copy of any entry under the hand of the superintendent registrar who has the custody for the time being of such book (*n*).

Searches of other registers.

882. Searches may also be made, at all reasonable times, on payment of the proper fee (*o*), in any register book in the possession of a registrar of births and deaths, or registrar of marriages, or in the possession of any person charged with the registration of marriages, and a certificate under the hand of the person in whose custody the register legally is, may, on payment of the proper fee (*p*), be obtained (*q*).

SECT. 5.—*Certificates.*

Certificates.

883. A certificate is a copy certified under the hand of the person lawfully holding the register to be an accurate copy of an entry in a register legally in his custody, or a copy certified under the seal of the Registrar-General to be an accurate copy of an entry in a register or in the certified copies in his custody (*r*).

Part III.—Notification and Registration of Births.

SECT. 1.—*Persons under Obligation.*

Persons bound to inform registrars and to sign register.

884. The father (*s*) or mother of every child "born alive" (*t*) must give to the registrar information of the particulars required to be registered, and must sign the register in the presence of the registrar. In default of the father and mother, information must

secretaries of synagogues); Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 7 (5); Stat. R. & O., 1909, pp. 527, 546, Section X. (authorised persons for nonconformist registered buildings)).

(*n*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), ss. 32, 42, Sched. II.

(*o*) See note (*m*), p. 449, *ante*.

(*p*) For the fees, see note (*g*), p. 449, *ante*.

(*q*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 35 (registrars, clergymen of the Church of England, registering officers of the Society of Friends, and secretaries of synagogues); Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 32 (superintendent registrars); Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 7 (5); Stat. R. & O., 1909, p. 546, Section X. (authorised persons for nonconformist registered buildings).

(*r*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), ss. 35, 37; Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 32; Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 7 (5). Every certificate must bear a 1*d.* stamp; but see note (*i*), p. 449, *ante*; and as to the need for signature and its admissibility as evidence, see title EVIDENCE, Vol. XIII., pp. 533, 534. As to certified copies of marriage certificates, see title HUSBAND AND WIFE, Vol. XVI., pp. 311, 312. Copies of entries in the following registers deposited with the Registrar-General, having no statutory authority, are not certified under seal, but are authenticated by signature only:—The registers of marriages at the Fleet and King's Bench Prisons, at Mayfair and at the Mint in Southwark; the register of Marriages of British subjects performed on board His Majesty's ships; the registers of

(*s*), (*t*) For notes (*s*), (*t*), see p. 451.

be given, and the register signed, by the occupier of the house in which the child is born, or by one of the persons (if any) present at the birth, or by the person having charge of the child (*u*).

SECT. 1. Persons under Obligation.

Foundlings.

885. Where a living new-born child is found exposed, it is the duty of the person finding the child, and the person in whose charge the child is placed, to give information of the particulars required to be registered within seven days, and to sign the register in the presence of the registrar (*a*).

SECT. 2.—*Time.*

Within three months.

886. The person whose duty it is to inform the registrar and sign the register must do so within forty-two days next after the birth (*b*). If a birth is not duly registered, the registrar may at any time after the expiration of the forty-two days, and within three months from the date of birth, by notice in writing require any of the persons whose duty it is to register the birth to attend at his office to give information of the particulars required to be registered, and to sign the register in his presence (*c*).

Any person whose duty it is to register a birth may, however, require the registrar, on giving notice in writing and on payment

births, deaths, and marriages in the Ionian Islands, and miscellaneous home and foreign registers (see pp. 436, 437, *ante*, and List obtainable free of charge at the General Register Office). As to the admissibility in evidence of non-parochial registers, see titles EVIDENCE, Vol. XIII., p. 539; HUSBAND AND WIFE, Vol. XVI., p. 312. As to registers generally, see pp. 445 *et seq.*, *ante*.

(*s*) The father of an illegitimate child is not required to give such information and must not be entered in the register as the father of the child, unless at the joint request of the mother and himself (Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 7); and see note (*r*), p. 445, *ante*.

(*t*) The births of still-born children are not registered. The birth of every child "that has lived after complete separation from the body of the mother" must be registered, no matter how soon it may die (Registrar-General's Regulations). In the event of its death, that must also be registered (*ibid.*).

(*u*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 1; and as to the necessity for signature, see title EVIDENCE, Vol. XIII., p. 533. Any person whose duty it is to register the birth, who removes from the sub-district in which the birth took place, may within three months of the date of birth make a declaration in writing of the particulars required to be registered before the registrar of the sub-district in which he resides. Such declaration, on payment of a fee of 2*s.*, must be attested by such registrar and must be sent to the registrar of the sub-district in which the birth took place, who must enter particulars of such birth in his register in the same manner as if the information had been given to him personally. For all purposes such entry is considered to have been made on personal information and signature (Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 6). Any person who wilfully makes a false answer to any question put to him by the registrar relating to the particulars required to be registered, or makes a false statement with intent to have the same inserted in any register of births, is liable on summary conviction to a penalty not exceeding £10, or on conviction on indictment to penal servitude for a term not exceeding seven years, or to imprisonment with or without hard labour for a term not exceeding two years, or to a fine instead of either penal servitude or imprisonment (Perjury Act, 1911 (1 & 2 Geo. 5, c. 6), s. 4).

(*a*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 3.

(*b*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 1. As to the special provision for foundlings, see, however, the text, *supra*.

(*c*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88).

SECT. 2. Time.

of the appointed fee, to attend at his residence or at the house where the child was born and to there register the birth in the prescribed manner (*d*).

Within twelve months.

After the expiration of three months, and not later than twelve months, after the date of birth, the registrar may require by notice in writing any of the persons whose duty it is to register the birth to attend at the district register office and to make before the superintendent registrar a solemn declaration of the particulars required to be registered and to sign the register in the presence of the registrar and superintendent registrar, who must also sign the register (*e*). After the expiration of twelve months, no birth may be registered unless the written consent of the Registrar-General is first obtained (*f*). The penalty for contravening this provision is a fine not exceeding £10 (*g*). The Registrar-General, on the advice of the law officers, does not grant his consent to the registration of a birth after seven years.

After twelve months.

Part IV.—Registration of Marriages.

SECT. 1.—*In England.*

SUB-SECT. 1.—*Registration Authorities.*

Persons under duty to register.

887. The following persons must register (*h*) marriages solemnised in England (*i*):—

Church of England.

In the case of a marriage according to the rites of the Church of England, the clergyman by whom or in whose presence the marriage is solemnised (*k*).

(*d*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88 s. 4. The prescribed fee is 1*s.*, but it may not be demanded in the case of births in a public institution (*ibid.*).

(*e*) *Ibid.*, s. 5.

(*f*) *Ibid.*, s. 5.

(*g*) *Ibid.*, s. 5. For notification of births where the Notification of Births Act, 1907 (7 Edw. 7, c. 40), is in force, see title MEDICINE AND PHARMACY, Vol. XX., p. 339. Such notification is in addition to and not in substitution for the notification under the Births and Deaths Registration Acts (see pp. 450, 451, *ante*) (Notification of Births Act, 1907 (7 Edw. 7, c. 40), s. 1 (4)). Penalties under the Act are recoverable summarily (*ibid.*, s. 1 (3)). As to summary procedure, see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.* For places where the Act is in force, see Stat. R. & O., 1909, p. 874; 1910, p. 906. The Local Government Board has power to put the Act in force in the area of any local authority, if it thinks it expedient, having regard to the circumstances of the area (Notification of Births Act, 1907 (7 Edw. 7, c. 40), s. 3). For form of resolution adopting the Act, see *ibid.*, Sched.

(*h*) As to the law relating to marriage generally, see title HUSBAND AND WIFE, Vol. XVI., pp. 278—286 *et seq.*

(*i*) In the case of a religious ceremony being performed after a previous marriage in a superintendent registrar's office, the religious ceremony is not registered as a marriage (Marriage and Registration Act, 1856 (19 & 20 Vict. c. 119), s. 12).

(*k*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 31; Marriage Act, 1836 (6 & 7 Will. 4, c. 85), s. 30 (chapels licensed for marriages in populous places); Extra-parochial Places Act, 1857 (20 Vict. c. 19), s. 10 (churches and chapels authorised for marriage in extra-parochial places); and see title ECCLESIASTICAL LAW, Vol. XI., pp. 705, 706.

In the case of a marriage according to the usages of the Society of Friends, the registering officer of the Society for the district in which the marriage is solemnised, whether he was present at the marriage or not, and it is his duty to satisfy himself that the proceedings in relation to the marriage were conformable to the usages of the Society (*l*). Quakers.

In the case of a marriage according to the usages of the Jews, the secretary of the synagogue to which the husband belongs, and it is his duty, whether he was present at the marriage or not, to satisfy himself that the proceedings in relation to the marriage were conformable to the usages of persons professing the Jewish religion (*m*). Jews.

In the case of a nonconformist marriage solemnised in a registered building, the registrar, if the marriage is solemnised in the presence of a registrar (*n*); if not in the presence of a registrar, the person duly authorised for the purpose by the trustees or other governing body of the building (*o*), or the person duly authorised in respect of some other registered building in the same registration district (*p*). Nonconformists.

In the case of a marriage in a superintendent registrar's office, the registrar in whose presence it is solemnised (*q*). Superintendent-registrar.

SUB-SECT. 2.—*Mode of Registration.*

888. Every person, other than registrars of marriage, whose duty it is to register marriages must, immediately after the solemnisation or, in the case of a marriage according to the usages of the Society of Friends, as soon as conveniently may be after the solemnisation, register the marriage in duplicate in two of the register books by entering therein the prescribed particulars (*r*). Registration by persons other than registrars.

(*l*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 31; Marriage (Society of Friends) Act, 1860 (23 & 24 Vict. c. 18), s. 2; and see title ECCLESIASTICAL LAW, Vol. XI., p. 823. The registering officer is such person as the recording clerk of the Society at the central office of the Society in London from time to time certifies in writing to the Registrar-General to be a registering officer (Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 30).

(*m*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 31. The duty of registering Jewish marriages is imposed on every person whom the president for the time being of the London Committee of Deputies of British Jews from time to time certifies to the Registrar-General to be the secretary of a synagogue (*ibid.*, s. 30); on every person whom twenty householders professing the Jewish religion (see title ECCLESIASTICAL LAW, Vol. XI., pp. 824 *et seq.*), and being members of the West London Synagogue of British Jews, certify to the Registrar-General to be the secretary of that synagogue; on every person certified by that secretary to be the secretary of some other synagogue of not less than twenty householders professing the Jewish religion, connected with the West London Synagogue, and established for not less than one year (Marriage and Registration Act, 1856 (19 & 20 Vict. c. 119), s. 22).

(*n*) Marriage Act, 1836 (6 & 7 Will. 4, c. 85), s. 23.

(*o*) Including, in the case of Roman Catholic registered buildings, the bishop or vicar-general of the diocese (Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 1 (3)).

(*p*) *Ibid.*, ss. 6 (3), 7 (1). As to authorised persons, see, further, title HUSBAND AND WIFE, Vol XVI., p. 303.

(*q*) Marriage Act, 1836 (6 & 7 Will. 4, c. 85), s. 23.

(*r*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 31, Sched. C (and see note (*d*), p. 446, *ante*) (marriages according to the rites of the Church of England, and to the usages of the Society of Friends and the Jews); Marriage (Society of Friends) Act, 1860 (23 & 24 Vict. c. 18) (marriages

SECT. 1. In England.

If an authorised person for a registered building officiates at a marriage in another registered building in the same district, he must arrange to have access to the register books belonging to that building; in no circumstances may the books belonging to one registered building be used for a marriage in any other registered building (*s*).

Registration by registrars.

889. Every marriage solemnised in the presence of a registrar must be similarly registered by the registrar, except that it need not be registered in duplicate (*t*). If the marriage is solemnised in a registered building, the entry must be signed both by the person by or before whom the marriage was solemnised and by the registrar (*a*).

Power to require particulars.

890. The person whose duty it is to register (*b*) has the same power of asking particulars as a clergyman of the Church of England (*c*).

SECT. 2.—*At Sea and Abroad.*

SUB-SECT. 1.—*Who may Register.*

Marriage officers.

891. Where a marriage is solemnised abroad (*d*), between parties one of whom at least is a British subject, by or before

according to the usages of the Society of Friends, where only one or neither of the parties is a member of the Society); Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 7 (1); Stat. R. & O., 1909, pp. 527, 536, Section V. (nonconformist marriages in registered buildings solemnised without the presence of registrars).

(*s*) Stat. R. & O., 1909, Section II.

(*t*) Marriage Act, 1836 (6 & 7 Will. 4, c. 85), s. 23.

(*a*) *Ibid.*

(*b*) For penalty imposed on clergymen of the Church of England for refusal or omission to register, see title ECCLESIASTICAL LAW, Vol. XI., p. 706, note (*e*). Every person whose duty it is to register marriages is liable to the same penalties (Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 42), except an authorised person in a registered building (Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 12). This penalty is recoverable on summary conviction (Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 45). As to procedure on summary conviction, see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.*

(*c*) Marriage Act, 1836 (6 & 7 Will. 4, c. 85), s. 36; Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 40; Stat. R. & O., 1909, p. 536, Section V.; and see title ECCLESIASTICAL LAW, Vol. XI., p. 705, note (*d*). As to making false answers to such inquiries, see *ibid.*; Perjury Act, 1911 (1 & 2 Geo. 5, c. 6), s. 3. On an indictment for making false statements after marriage to the officiating clergyman, it is sufficient to prove that the statements were made before marriage to the clerk, and inserted by him in the register book, in the absence of the officiating clergyman, and averred by the prisoner to be correct in answer to a question put afterwards by the clergyman (*R.* v. *Brown* (1848), 1 Den. 291). It is essential that the false statement should have been made wilfully and not by mistake (*R.* v. *Dunboyne (Lord)* (1850), 3 Car. & Kir. 1). It would seem that to constitute an offence under this provision it is unnecessary that the purpose should be effected (*R.* v. *Mason* (1848), 2 Car. & Kir. 622; and see title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 741, 742).

(*d*) Marriages on His Majesty's ships on foreign stations are included (Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23), s. 12). The registration of marriages of officers and soldiers in the British army abroad is provided for by the King's Regulations for the Army (Regulation of Births, Deaths and Marriages (Army) Act, 1879 (42 & 43 Vict. c. 8), s. 2). As to the registration of naval marriages and marriages in India and the Colonies, see title HUSBAND AND WIFE, Vol. XVI., p. 307.

a marriage officer (*e*), it is his duty forthwith to register the marriage (*f*). SECT. 2. At Sea and Abroad.

892. The master of every British ship for which an official log is required must register in the official log book particulars of every marriage which takes place on board, with the names and ages of the parties (*g*). Masters of British ships.

SUB-SECT. 2.—*Mode of Registration.*

893. The registration by a marriage or consular officer must be in duplicate, in two marriage register books furnished for that purpose by the Registrar-General (through a Secretary of State), according to the form provided for the registration of marriages in England, or as near thereto as the difference of circumstances admits (*h*). The entry in each book must be signed by the marriage officer, by the person solemnising the marriage, if other than the marriage officer, by both the parties married, and by two witnesses of the marriage (*i*). Registration.

The marriage officer has the same powers of asking particulars as a clergyman of the Church of England (*j*). Particulars.

The statutory provisions and penalties already referred to (*k*) relating to registrars, registers of marriage, and certified copies in England apply to marriage and consular officers, registers of Application of general law.

(*e*) For qualifications of marriage officers, see title CONFLICT OF LAWS, Vol. VI., p. 259. As to proof of marriages abroad, see titles EVIDENCE, Vol. XIII., pp. 534—536; HUSBAND AND WIFE, Vol. XVI., pp. 313, 314.

(*f*) Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23), s. 9 (2). As to registration by consular officers of marriages (between parties of whom one is a British subject) solemnised according to local law, see title CONFLICT OF LAWS, Vol. VI., p. 260. The fees payable in respect of such registration are as follows:—The fee in places other than China, Korea, and Japan is 10*s*. (Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23), s. 20; Consular Salaries and Fees Act, 1891 (54 & 55 Vict. c. 36); Consular Fees (General) Order in Council, 1906; Stat. R. & O., 1906, p. 76). As to China, Korea, and Japan, see the China and Korea (Consular and Marriage Fees) Order in Council, 1906; Stat. R. & O., 1906, p. 88, and the Japan (Consular and Marriage Fees) Order in Council, 1906; Stat. R. & O., 1906, p. 101.

(*g*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 240 (6), 253 (1) (viii.).

(*h*) Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23), ss. 9 (2), 18. Where the marriage to be registered is solemnised in accordance with local law (see note (*f*), *supra.*), the marriage must be registered in books kept separate from the books provided for registering marriages solemnised by or before the marriage or consular officer (Foreign Marriages Orders in Council, 1892, art. 8 (2), 1895; Stat. R. & O. Rev., Vol. VIII., Marriage, pp. 36, 39, 44).

(*i*) Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23), ss. 9 (3), 18. In the case of registration of a marriage solemnised in accordance with the local law (see note (*f*), *supra.*), if the person by whom the marriage is solemnised declines to sign the entry, the consular officer must enter the name of that person and the fact that he declines to sign it (Foreign Marriages Orders in Council, 1892, art. 8 (2), 1895; Stat. R. & O. Rev., Vol. VIII., Marriage, pp. 36, 39, 44).

(*j*) Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23), s. 9 (5); and see title ECCLESIASTICAL LAW, Vol. XI., p. 705, note (*d*). False statements in answer to such questions are punishable as perjury (Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23), s. 15 (a); Perjury Act, 1911 (1 & 2 Geo. 5, c. 6), s. 3.

(*k*) Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23), ss. 17, 18; see pp. 452 *et seq.*, *ante*.

SECT. 2. At Sea and Abroad.

marriages and certified copies abroad, so far as they are applicable, as if every marriage officer were a registrar (*l*).

Part V.—Registration of Deaths.

SECT. 1.—*Notice to Registrar.*

Death in a house.

894. Where a person dies in a house, the persons on whom is imposed the duty to give to the registrar information of the particulars required to be registered and to sign the register in the presence of the registrar are (1) the nearest relatives of the deceased present at the death or in attendance during the last illness of the deceased; and (2) in default of such relatives, every other relative dwelling or being in the same sub-district as the deceased; and (3) in default of such relatives, each person present at the death, and the occupier of the house in which the death took place; and (4) in default, each inmate of the house and the persons causing the body to be buried (*m*).

Death elsewhere.

895. Where a person dies elsewhere than in a house, the persons on whom is imposed the duty to give information of the particulars required to be registered and to sign the register are (1) every relative who has knowledge of any of the particulars required to be registered; and (2) in default of such relatives, every person present at the death, any person finding or taking charge of the body, and the person causing the body to be buried (*n*).

Time.

896. The person whose duty it is to inform the registrar and sign the register must do so either within five days next after the death (*o*), or where a written notice, with a medical certificate of the cause of death, is sent to the registrar, within fourteen days next after the death (*p*). If a death is not duly registered,

(*l*) Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23), ss. 17, 18.

(*m*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 10. Any person who wilfully makes a false answer to any question put to him by the registrar relating to the particulars required to be registered, or makes a false statement with intent to have the same inserted in any register of deaths, is liable to the penalties of perjury (Perjury Act, 1911 (1 & 2 Geo. 5, c. 6), s. 4).

(*n*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 11. As to notification of the deaths of habitual drunkards, see title INTOXICATING LIQUORS, Vol. XVIII., pp. 165, 166. In the case of the death of a lunatic, the clerk of the asylum, the superintendent of the hospital or resident licensee of the house in which the death took place, or, in the case of a single lunatic patient, the person in charge, must, within forty-eight hours of death, send a notice, and a statement by the medical attendant, of the death to the registrar (Stat. R. & O. Rev., Vol. VIII., Lunatic, England, p. 44).

(*o*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), ss. 10, 11. As to furnishing of information to registrars by coroners, see title CORONERS, Vol. VIII., pp. 271, 272.

(*p*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 12. As to the medical certificate, see title MEDICINE AND PHARMACY, Vol. XX.,

SECT. 1. Notice to Registrar.

the registrar may, at any time after the expiration of fourteen days and within twelve months from the day of death or the finding of the dead body, by notice in writing, require any of the persons whose duty it is to register the death to attend at his office to give information of the particulars required to be registered, and to sign the register in the presence of the registrar (*q*). Any person whose duty it is to register a death may require the registrar to register the death at his residence on giving notice in writing and on payment of the appointed fee (*a*).

SECT. 2.—*Certificate of Cause of Death.*

Coroner's certificate.

897. Where an inquest is held on a dead body, the coroner's certificate of the finding of the jury is sent to the registrar instead of a medical certificate of the cause of death (*b*).

Part VI.—Registration of Births and Deaths at Sea and Abroad.

On board British ships.

898. The master of every British ship, whether registered or not, in the United Kingdom must record in the log book, or otherwise, the occurrence of every birth or death which takes place on board (*c*), and must on the ship's arrival at any port in the United Kingdom deliver a return of the entries of births and deaths recorded by him to the Registrar-General of Shipping and Seamen (*d*). A certified copy of the return must be sent by the Registrar-General of Shipping and Seamen to the Registrar-General of Births and Deaths

p. 339. The certificate must be given by the medical practitioner to the person whose duty it is to give information of the death, and by him to the registrar, subject to a penalty not exceeding £2 (Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 20). In the case of the death of a child whose life is insured, the registrar must in addition be satisfied that the payment does not exceed the statutory limit; see title FRIENDLY SOCIETIES, Vol. XV., pp. 155, 156; and the registrar must indorse the certificate of death with a note of the sum payable and the name of the society liable for payment (Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), ss. 64, 65). For a form of application to a registrar for such a certificate, see Encyclopædia of Forms and Precedents, Vol. VI., p. 71.

(*q*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 13. After the expiration of twelve months no death can be registered without the written consent of the Registrar-General (*ibid.*, s. 15). The penalty for contravening this provision is a fine not exceeding £10 (*ibid.*).

(*a*) *Ibid.*, s. 14. The fee prescribed is 1*s.* (*ibid.*, s. 14, Sched. II.), but it is not payable in the case of deaths in a public institution (*ibid.*).

(*b*) *Ibid.*, s. 20; Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 4 (4).

(*c*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 254. As to the particulars required to be registered, see *ibid.*, Sched. VIII.; and see pp. 445, 446, *ante*.

(*d*) Where the port of arrival is out of the United Kingdom but in a British possession, the return must be delivered to the superintendent or chief officer of customs; if the port of arrival is elsewhere, the return must be made to the British consular officer (Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 254 (3)). As to the Registrar-General of Shipping, see title SHIPPING AND NAVIGATION.

PART VI. Registration of Births and Deaths at Sea and Abroad.

in England, whose duty it is to preserve it in the marine register book (*e*).

On board His Majesty's ships.

899. A captain, or other person having charge, of one of His Majesty's ships must send to the Registrar-General, in such manner and form and at such time (*f*) as the Lords Commissioners of the Admiralty may direct, a return of the entries of births and deaths received by him (*g*).

Relating to the Army abroad.

900. All registers of births and deaths occurring out of the United Kingdom (*h*) among officers and soldiers in the British Army are kept in pursuance of His Majesty's Regulations (*i*) and authenticated and transmitted to the Registrar-General (*k*), whose duty it is to file them and copy them in a book kept for the purpose, called "the Army Register Book" (*l*).

In India.

901. The registration of births and deaths in India is prescribed by Indian legislation and is not under the control of the Registrar-General in England (*m*).

British subjects in foreign countries.

902. Every consular officer must keep a register for births and a register for deaths (*n*), wherein he must record the births and deaths of British subjects occurring in his district (*o*), and he must notify

(*e*) Where the father or, in the case of an illegitimate child, the mother of a child so born is, or the deceased was, a Scottish or Irish subject, the certified copy is sent to the Registrar-General of Births and Deaths in Scotland or Ireland, as the case may require (Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 254 (4)). A master who fails to comply with any requirement is liable to a fine not exceeding £5 (*ibid.*, s. 254 (5)).

(*f*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 37 (6). Such returns are usually sent upon arrival of such ship at a port of the United Kingdom.

(*g*) *Ibid.*, s. 37 (6).

(*h*) The Registration of Births, Deaths and Marriages (Army) Act, 1879 (42 & 43 Vict. c. 8), does not apply to births and deaths in the United Kingdom (*ibid.*, s. 4); see King's Regulations for the Army, 1912, par. 1934-1949.

(*i*) King's Regulations for the Army, 1912, par. 1880, 1941, 1941A; and see note (*d*), p. 454, *ante*.

(*k*) Registration of Births, Deaths and Marriages (Army) Act, 1879 (42 & 43 Vict. c. 8). In the case of entries relating to Scottish or Irish subjects, the certified copy is sent to the Registrar-General of Births and Deaths in Scotland or Ireland as the case may require (*ibid.*, s. 2).

(*l*) The Registrar-General has also the custody of all registers, muster-rolls, and pay lists (including extracts thereof) showing the births and deaths prior to 1879 which have been kept and made under the direction of a Secretary of State and transmitted to the Registrar-General. Such documents, or any certified copy thereof, are admissible in evidence (*ibid.*, s. 3).

(*m*) Births, Deaths and Marriages Registration Act, 1886 (Act No. VI. of 1886); Central Provinces Municipal Act, 1903 (Act No. XVI. of 1903), s. 105 (i.); Bengal Births and Deaths Registration Act, 1873 (Act No. IV. of 1873); Madras Registration of Births and Deaths Act, 1899 (Act No. III. of 1899); and see Index to Indian Statutes, 1911; titles EVIDENCE, Vol. XIII., p. 535; HUSBAND AND WIFE, Vol. XVI., pp. 307, 308.

(*n*) Register books are supplied by the Secretary of State to consuls, who supply the vice-consuls in their districts (General Instructions for H.M. Consular Officers (1907), ch. xxxi., 13).

(*o*) Naturalization Act, 1870 (33 & 34 Vict. c. 14), s. 11 (5); General

by notice exhibited in his office, and by such means as may appear most judicious, the fact that he is authorised to register births and deaths (*p*).

A child born abroad and not within a consular district may be registered at any consulate, provided the consular officer is satisfied that the birth did not take place within any consular district, that seven years have not elapsed since the date of the birth, and that the sanction of a Secretary of State is first obtained (*q*).

Illegitimate children of British parents born abroad and children of naturalised British subjects born abroad must not be registered (*r*).

The particulars required to be registered are the same as those required in England (*s*).

Correction of errors.

Any error discovered before the completion of an entry may be rectified at once, and must be initialled by the consular officer in the margin (*t*). An error, omission, or discrepancy discovered after the completion of an entry may be corrected by the consular officer in the presence of the original informant or of some other person cognisant of the facts of the case. A clerical error, omission, or discrepancy may be corrected at once, and a note must be inserted in the margin (*a*); but, to correct an error of fact, a statutory declaration by the person requiring the correction is desirable (*b*).

Re-registration.

If any addition or alteration is desired in the name under which a child has been registered, the birth must be re-registered by the informant who registered the same originally if possible (*c*).

Instructions for H.M. Consular Officers (1907), ch. xxxi., 1. A consular officer may not register a birth or death after seven years without the sanction of the Secretary of State. The entry in such a case must bear the words " on the authority of the Secretary of State " (*ibid.*, 3).

(*p*) *Ibid.*, ch. xxxi., 7. Consular officers are instructed to do so, as it is desirable to encourage registration (*ibid.*).

(*q*) *Ibid.*, ch. xxxi., 8. In such a case, after the date of registration, the words " on the authority of the Secretary of State " must be inserted.

(*r*) *Ibid.*, ch. xxxi., 9, 10. An illegitimate child of British parents born abroad is not a British subject; children of naturalised British parents born abroad are at the time of their birth aliens in contemplation of English law (*ibid.*); and see title ALIENS, Vol. I., p. 315.

(*s*) General Instructions for H.M. Consular Officers (1907), ch. xxxi., 6. Where, however, the presence of the informant is impracticable, the signature of the informant may be dispensed with on receipt of a letter and statutory declaration from the father and district medical officer (*ibid.*).

(*t*) *Ibid.*, ch. xxxi., 12.

(*a*) *Ibid.* For form of such note, see *ibid.*

(*b*) *Ibid.* In this case the erroneous particulars should be indicated by a line in ink drawn under them. The correction should be effected by a note in the margin without any alteration of the original entry. For form of note, see *ibid.* In all cases in which a correction is made after the certified copies of the original entries have been transmitted to the Registrar-General, a copy of the amended entry, with the marginal note, and certified under the consul's hand and consular seal, must be forwarded to the Registrar-General (*ibid.*).

(*c*) *Ibid.*, ch. xxxi., 11. The words " Re-registered at No. " must be added opposite the original entry. Where the certified copy of the original entry has been already transmitted to the Registrar General, a fresh copy, with the marginal note, and certified under the consul's

PART VI.

Registration of Births and Deaths at Sea and Abroad.

Annual returns of entries.

Every consular officer must, in January of each year, forward to the Registrar-General on the forms officially provided a certified copy of each entry made in the registers of births and deaths during the year (*d*).

hand and consular seal, must be forwarded at the time of re-registration to the Registrar-General (Instructions for H.M. Consular Officers (1907), ch. xxxi., 11).

(*d*) *Ibid.*, 2. Vice-consuls and consular agents forward the returns to their superintending consul (*ibid.*). If no registration has taken place, a certificate to that effect must be sent on "Nil" return forms. Forms are supplied by the Secretary of State.

REGISTRATION OF DEEDS AND WILLS.

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REGISTRATION OF PATENTS.

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REGISTRATION OF VOTERS.

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RENTCHARGES AND ANNUITIES.

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Part I.—Nature of Rentcharges and Annuities.

SECT. 1.—*Rentcharges and Annuities in General.*

SECT. 1. Rentcharges and Annuities in General.

903. The right created by an instrument (whether deed, will, codicil, or statute) to receive a definite annual sum of money is an interest which may be, strictly speaking, either a "rentcharge" or an "annuity." If the only source from which the money is directed to be paid be freeholds or copyholds, the interest is a rentcharge and is in the nature of real estate (*a*). If the only source from which the money is directed to be paid be personal estate, other than leaseholds, the interest is an annuity and is in the nature of personal estate (*b*). If, lastly, the only source from which the money is directed to be paid be leaseholds, the interest may be properly described as a rentcharge (*c*), and is a chattel real in the nature of personal estate (*d*).

Nature of interest depending on the source of payment.

Difficulties as to the nature of the interest arise where several sources, themselves differing in nature, are provided for payment of the money. In such case it depends on the construction and effect of the instrument creating it whether the interest is in the nature of real estate, or in the nature of personal estate; and regard must be had (1) to the words in which the interest is dezcribed in the instrument, for example, as a "rentcharge" or as an "annuity"; (2) to any priority in which recourse must be had to

Interest arising from several sources.

(*a*) *Savery* v. *Dyer* (1752), Amb. 139; *Weston* v. *Bowes* (1742), 9 Mod. Rep. 309; *Buttery* v. *Robinson* (1826), 3 Bing. 392; *Ramsay* v. *Thorngate* (1849), 16 Sim. 575 (where the gift was to A., her executors, administrators and assigns); *Patching* v. *Barnett* (1881), 51 L. J. (CH.) 74, C. A.; *Re Waring, Greer* v. *Waring*, [1896] 1 I. R. 427.

(*b*) *Savery* v. *Dyer, supra*; *Aubin* v. *Daly* (1820), 4 B. & Ald. 59; *Radburn* v. *Jervis* (1841), 3 Beav. 450; Co. Litt. 20 a; 2 Bl. Com., 1766 ed., 40. As to personal property generally, see title PERSONAL PROPERTY, Vol. XXII., pp. 385 *et seq.*

(*c*) *Re Fraser, Lowther* v. *Fraser*, [1904] 1 Ch. 111, 726, C. A.; *Martin* v. *Haynes* (1892), 29 L. R. Ir. 416.

(*d*) *Ibid.*; *Saffery* v. *Elgood* (1834), 1 Ad. & El. 191; *Wiltshire* v. *Rabbits* (1844), 14 Sim. 76; *St. Auby's Case* (1590), Cro. Eliz. 183; and see p. 474, *post*; title REAL PROPERTY AND CHATTELS REAL, pp. 163, 164, *ante*.

SECT. 1. Rentcharges and Annuities in General.

the several sources of payment; and (3) to any words of limitation annexed to the name of the person taking the interest (*e*).

SECT. 2.—*Nature of a Rentcharge.*

A charge on land secured by distress.

904. A rentcharge is an annual sum issuing out of land the due payment of which is secured by a right of distress (*f*). It is called a "rentcharge" because the land for payment thereof is charged with a distress (*g*). Where there was no power of distress the rent was called a "rent seck" (*h*).

According to the law before 1730, a power of distress might have arisen either by an express clause or by the common law (*i*). The common law, however, only conferred a power of distress in the following exceptional cases, that is to say, where a rent was granted (1) to a widow in lieu of dower, or (2) for equality of exchange, or (3) by one coparcener to another for equality of partition (*k*).

Rents seck now rentcharges.

In 1730 the same remedy by distress which existed in the case of rents reserved on lease was extended to rents seck (*l*), which were thereby in effect converted into rentcharges (*m*).

Now, by the Conveyancing and Law of Property Act, 1881 (*n*), the owner of an annual sum charged by some instrument on land or its income by way of rentcharge or otherwise, not being a rent incident to a reversion, can enforce payment of such annual sum by distress or entry or demise for a term of years of the land charged (*o*). This provision, however, only applies where the instrument comes into operation after the 31st December, 1881 (*p*).

(*e*) *E.g.*, whether the annual sum is given to "A., his heirs and assigns," or to "A., his executors, administrators and assigns." As to interests arising from several sources, see p. 467, *post.*

(*f*) Co. Litt. 143 b, 144 a, 218; Tudor, L. C. Real Prop., 4th ed., p. 41; Gilbert on Rents, 16; 2 Bl. Com., 1766 ed., 42; Vin. Abr., tit. "Rent," D, 475; Com. Dig., tit. "Rent," C, 6; *West* v. *Robson* (1858), 3 C. B. (N. S.) 422, 438; *Weston* v. *Bowes* (1742), 9 Mod. Rep. 309.

(*g*) Co. Litt. 143 b; *Re Gerard (Lord) and Beecham's Contract*, [1894] 3 Ch. 295, 308, 311, C. A.; *Weston* v. *Bowes, supra,* at p. 310; and see title DISTRESS, Vol. XI., p. 119.

(*h*) Littleton's Tenures, s. 218; *Weston* v. *Bowes, supra,* at p. 310.

(*i*) See Co. Litt. 147 a (where it is said that if a man seised of land in fee bindeth his goods and lands to the payment of a yearly rent, this is a good rentcharge with power to distrain, albeit there be no express words of charge nor to distrain); *Monypenny* v. *Monypenny* (1861), 9 H. L. Cas. 114, 138.

(*k*) Gilbert on Rents, 19, 20.

(*l*) Landlord and Tenant Act, 1730 (4 Geo. 2, c. 28), s. 5. Fealty was an inseparable incident to a reversion (Co. Litt. 143 a). The right of distress and fealty were also inseparable (Gilbert on Rents, 5, 107). Hence every rent incident to a reversion carries the right of distress. See, further, titles DISTRESS, Vol. XI., pp. 119 *et seq.*; LANDLORD AND TENANT, Vol. XVIII., pp. 464 *et seq.*; REAL PROPERTY AND CHATTELS REAL, pp. 138 *et seq.*, 284, 285, *ante.*

(*m*) See *Buttery* v. *Robinson* (1826), 3 Bing. 392; *Roper* v. *Roper* (1876), 3 Ch. D. 714, 720; *Re Gerard (Lord) and Beecham's Contract, supra,* at p. 311 (where it was said "It was the right of distress which made the rent a rentcharge"); *Sollory* v. *Leaver* (1869), L. R. 9 Eq. 22, 24, 25; see *Dodds* v. *Thompson* (1865), L. R. 1 C. P. 133, 137; *Saward* v. *Anstey* (1825), 2 Bing. 518.

(*n*) 44 & 45 Vict. c. 41, s. 44.

(*o*) *Ibid.*, s. 44 (1), (2), (3), (4); see p. 514, *post.*.

(*p*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 44 (6).

SECT. 2. Nature of a Rentcharge.

905. As regards the relation of rentcharges to rents described in other ways, it should be noted that a rentcharge in fee may in some cases be described by the term "fee farm rent" (*q*). A rentcharge, however, must be distinguished from a rent service, which is an incident of tenure, being a rent reserved by a grantor who retains the reversion in the land (*r*); whereas a rentcharge is not an incident of tenure, the owner having no reversion (*s*). Again, a rentcharge in the ordinary sense must be distinguished from a tithe rentcharge, which is a right to receive part of the produce of land, whereas a rentcharge is charged on the land itself (*t*).

Rentcharge distinguished from rent service and tithe rentcharge.

906. A rentcharge is an incorporeal hereditament (*a*) and is *primâ facie* real estate (*b*). It is usually charged on the inheritance (*c*); but it may be charged upon leaseholds, in which case it is a chattel real in the nature of personal estate (*d*). If a rentcharge

An incorporeal hereditament.

(*q*) See Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 10 (1), 20 (2) (iii.), Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 9; Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 14 (3). The term "fee farm rent" occurs frequently in legislation relating to land in Ireland; see Renewable Leasehold Conversion Act, 1849 (12 & 13 Vict. c. 105); Land Law (Ireland) Act, 1881 (44 & 45 Vict. c. 49), ss. 11, 12, 26, 29. The fee farm rents referred to in such legislation are in effect rentcharges. The strict meaning of the term "fee farm rent" seems to be a rent reserved upon a grant of land in fee (Co. Litt. 143 b, n. 5; *Bradbury* v. *Wright* (1781), 2 Doug. (K. B.) 624, 627, n., where it is said that the rent must be at least one fourth of the value of the land at the time of the reservation); see, further, title REAL PROPERTY AND CHATTELS REAL, p. 285, *ante*.

(*r*) Co. Litt. 87 b, 142 b; Littleton's Tenures, ss. 214—216; and see, further, titles LANDLORD AND TENANT, Vol. XVIII., pp. 464 *et seq.*; REAL PROPERTY AND CHATTELS REAL, pp. 138, 139, 284, 285, *ante*.

(*s*) *Esdaile* v. *Stephenson* (1822), 1 Sim. & St. 122, 124; and see title DISTRESS, Vol. XI., p. 119.

(*t*) *Bailey* v. *Badham* (1885), 30 Ch. D. 84, 88; and, as to tithe rentcharge, see, further, title ECCLESIASTICAL LAW, Vol. XI., pp. 742 *et seq.*

(*a*) Co. Litt. 49 a; Bl. Com., 1766 ed., 20; *Re Brewer* (1875), 1 Ch. D. 409, 410, C. A.; title REAL PROPERTY AND CHATTELS REAL, pp. 161, 284, *ante*. Sir F. Pollock considers that the treatment in English law of a rentcharge as an incorporeal hereditament is arbitrary (Pollock, Principles of Contract, 8th ed., p. 249, n. (k); 8th ed., p. 249, n (o).

(*b*) *Savery* v. *Dyer* (1752), Amb. 139; "a rentcharge is an interest in the land itself" (*Creed* v. *Creed* (1844), 11 Cl. & Fin. 491, 508, 510, H. L.; it is a "portion of the estate" (*Pitt* v. *Dacre* (*Lord*) (1876), 3 Ch. D. 295, 299). A rentcharge in fee is subject to curtesy (Co. Litt. 29 a) and dower (Co. Litt. 32 a; see *Chaplin* v. *Chaplin* (1734), 3 P. Wms. 229; title REAL PROPERTY AND CHATTELS REAL, pp. 183, 184, 190, *ante*). On the death of the owner intestate it ordinarily descends to the common law heir, but when granted out of gavelkind land it descends in gavelkind (*Edwin* v. *Thomas* (1687), 1 Vern. 489; see *Stokes* v. *Verryer* (1674), 1 Mod. Rep. 112; *Randall* v. *Writtle* (1673), 2 Lev. 87; titles DESCENT AND DISTRIBUTION, Vol. XI., p. 3; REAL PROPERTY AND CHATTELS REAL, p. 155, *ante*). If there are no heirs it may escheat to the Crown (Intestates Estates Act, 1884 (47 & 48 Vict. c. 71), s. 4; see title DESCENT AND DISTRIBUTION, Vol. XI., p. 24). A rentcharge granted for equality of partition descends in the same manner as the land (Co. Litt. 169 b). The yearly sum charged by way of interest in favour of a person who redeems land tax is in the nature of a rentcharge (*Skene* v. *Cook*, [1901] 2 K. B. 7, 14; affirmed, [1902] 1 K. B. 682, 687, C. A.), but is by statute personal estate (*ibid.*; see title LAND TAX, Vol. XVIII, pp. 325, 326).

(*c*) *Bailey* v. *Badham*, *supra*; and see *Ashwin* v. *Bullock* (1899), 81 L. T. 48 (where the charge was on an undivided moiety of land).

(*d*) See p. 465, *ante*, note (*b*), *supra*, p. 474, *post*; and see *Bignold* v. *Giles* (1859), 4 Drew. 343, 346.

SECT. 2.
Nature of a Rentcharge.

be charged on both freeholds and leaseholds, it is considered as issuing out of the freeholds only, but nevertheless with a right to distrain on the leaseholds (*e*).

A rentcharge cannot at common law be created by a subject so as to issue out of a rent (*f*) or other incorporeal hereditament (*g*). The Crown, however, by virtue of its prerogative, can create a rent issuing out of an incorporeal hereditament (*h*); and a subject may, by statute, do the same (*i*).

A sum certain. Division.

907. A rentcharge must be a certain, not a fluctuating, sum (*k*). It may be divided by deed or will so as to render the land liable to several distresses (*l*).

Certain statutes applicable to rentcharges.

908. As regards the relation of rentcharges to divers statutes, the Real Property Limitation Act, 1833 (*m*), defines "rent" as extending to all services for which a distress may be made and all periodical sums of money charged upon or payable out of any land. "Rent" accordingly, as used in the Act, includes a rentcharge limited by deed (*n*) or by will (*o*).

By the Fines and Recoveries Act, 1833 (*p*), the word "land" is defined as extending to "rents and hereditaments of any tenure (except copy of court roll), and whether corporeal or incorporeal," and accordingly includes rentcharges.

The Judgments Act, 1838 (*q*), empowers the sheriff under a writ of

(*e*) *Butt's Case* (1600), 7 Co. Rep. 23 a; *Richardson* v. *Nixon* (1845), 2 Jo. & Lat. 250; *Drew* v. *Barry* (1874), 8 I. R. Eq. 260, 279, C. A.; see also Co. Litt. 147 a.

(*f*) *Stafford* (*Earl*) v. *Buckley* (1750), 2 Ves. Sen. 170, 178.

(*g*) *Gardiner* v. *Williamson* (1831), 2 B. & Ad. 336, 339; *Re Alms Corn Charity, Charity Commissioners* v. *Bode*, [1901] 2 Ch. 750, 759; Co. Litt. 47 a; Gilbert on Rents, 21.

(*h*) Co. Litt. 47 a; Gilbert on Rents, 22; *A.-G.* v. *Coventry* (*Mayor*) (1716), 1 P. Wms. 306; and see title CONSTITUTIONAL LAW, Vol. VI., p. 495.

(*i*) *Re Gerard* (*Lord*) *and Beecham's Contract*, [1894] 3 Ch. 295, 315, C. A. (where a rent reserved under statutory powers out of an easement was held to have been properly described in the contract for sale as a rentcharge); compare *Re Baxter's Trusts, Malling* v. *Addison* (1911), 103 L. T. 427, affirmed (1911), 104 L. T. 710, C. A.; and see note (*j*), p. 470, *post*.

(*k*) *Simey* v. *Marshall* (1872), L. R. 8 C. P. 269 (where an inmate of a charitable foundation, who was entitled to a share of the surplus, if any, of the rents of the charity estate, was held not to have a rentcharge, on the ground that his interest was fluctuating).

(*l*) *Rivis* v. *Watson* (1839), 5 M. & W. 255; see *Whitley* v. *Roberts* (1825), M'Cle. & Yo. 107; *Ards* v. *Watkin* (1599), Cro. Eliz. 637, 651; *Warner* v. *Baynes* (1750), Amb. 589. Where a rentcharge is held by A and B as tenants in common, if the terre-tenant pays the whole to A, after notice from B not to do so, B can distrain for his share (*Harrison* v. *Barnby* (1793), 5 Term Rep. 246); see, further, p. 514, *post*.

(*m*) 3 & 4 Will. 4, c. 27, s. 1.

(*n*) *Jones* v. *Withers* (1896), 74 L. T. 572, C. A.; and see title LIMITATION OF ACTIONS, Vol. XIX., p. 107.

(*o*) *James* v. *Salter* (1837), 3 Bing. (N. C.) 544, 553; and as to interest payable on redemption of land tax, see *Skene* v. *Cook*, [1901] 2 K. B. 7, 14; affirmed, [1902] 1 K. B. 682, 687, C. A.; title LAND TAX, Vol. XVIII., pp. 325, 326.

(*p*) 3 & 4 Will. 4, c. 74, s. 1; and see title REAL PROPERTY AND CHATTELS REAL, pp. 249, 250, *ante*.

(*q*) 1 & 2 Vict. c. 110, s. 11; and see title EXECUTION, Vol. XIV., p. 65.

SECT. 2. Nature of a Rentcharge.

elegit to take in execution the "lands, rents and hereditaments" of the judgment debtor, words which include a rentcharge (*r*).

In the Settled Land Act, 1882 (*s*), a rentcharge is included in "land," which is defined as extending to "incorporeal hereditaments" (*t*).

A man is not as a rule entitled to vote in respect of the ownership of a rentcharge, which word includes in the Representation of the People Act, 1884 (*u*), a "fee farm rent, a rent seck, a chief rent, a rent of assize, and any rent or annuity granted out of land" (*v*).

A rentcharge can, it seems, be vested by an order made as to "land" under the Trustee Act, 1893 (*a*), s. 26.

For the purposes of the Finance (1909-10) Act, 1910 (*b*), Part I., the expression "rentcharge" means "any perpetual rent or annuity granted out of land." It is included in the expression "fixed charge," but not in the expression "lands or incumbrances" (*c*).

SECT. 3.—*Nature of an Annuity.*

A charge on personalty.

909. An annuity is a sum of money payable yearly, or at any rate periodically, from a source which is exclusively or at any rate primarily personal estate (*d*).

Personal estate.

910. *Primâ facie* an annuity is itself personal estate (*e*). Thus, annuities were held to be in the nature of personal estate when granted by the Crown out of Barbados duties (*f*), or out of the revenues of the Post Office (*g*), or out of coal duties (*h*). So also where, under statutory powers, limited owners granted easements and chattels to a company, subject to the payment of an annual rent or sum to the grantors, their executors, administrators and assigns the interest was personal estate (*i*). Where a will directs

(*r*) Under the law before 1838 a rentcharge might have been taken under an *elegit* (*Wotton* v. *Shirt* (1600), Cro. Eliz. 742).

(*s*) 45 & 46 Vict. c. 38.

(*t*) *Ibid.*, s. 2 (10). See *Re Bective Estate* (1891) 27 L. R. Ir. 364; *Re Brewer* (1875), 1 Ch. D. 409, C. A.; and for further definitions of "land," see title REAL PROPERTY AND CHATTELS REAL, pp. 156, 157, *ante*.

(*u*) 48 & 49 Vict. c. 3.

(*v*) *Ibid.*, ss. 4, 11; and see title ELECTIONS, Vol. XII., pp. 147, 148.

(*a*) 56 & 57 Vict. c. 53; see *Re Harrison*, Seton Judgments and Orders, 7th ed., pp. 1180, 1208, in which case, however, the word "hereditament" was added to the order.

(*b*) 10 Edw. 7, c. 8; and see title REVENUE, p. 550, note (*d*), *post*.

(*c*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 41.

(*d*) *Savery* v. *Dyer* (1752), Amb. 139, 140; Co. Litt. 144 b; 2 Bl. Com. 40; Termes de la Ley, tit. Annuities; Com. Dig., tit. Annuity; Roll. Abr., tit. Annuitie; compare *Anon.* (1536), Dyer, 24; *Bignold* v. *Giles* (1859), 4 Drew. 343, 346.

(*e*) Such an interest "concerneth no land nor savoureth of the realtie" (Co. Litt. 20 a).

(*f*) *Aubin* v. *Daly* (1820), 4 B. & Ald. 59; *Stafford* (*Earl*) v. *Buckley* (1750), 2 Ves. Sen. 170.

(*g*) *Holdernesse* (*Countess Dowager*) v. *Carmarthen* (*Marquis*) (1784), 1 Bro. C. C. 376.

(*h*) *Radburn* v. *Jervis* (1841), 3 Beav. 450; compare *A.-G.* v. *Richmond* (*Duke*) (No. 2), [1907] 2 K. B. 940, *per* BRAY, J., at p. 973.

(*i*) *Re Baxter's Trusts*, *Malling* v. *Addison* (1910), 103 L. T. 427, affirmed

SECT. 3. Nature of an Annuity.

an "annuity" to be paid out of real and personal estate, the interest is *primâ facie* personalty (*j*).

Gifts of "annuities" construed as rentcharges.

911. The general rule is that annuities are included in the term "legacies" in a will (*k*); and even in the term "pecuniary legacies" (*l*), unless the will shows a contrary intention (*m*). Gifts by will, however, of interests called "annuities," accompanied by a charge on land, may, on construction, be held to amount to gifts of rentcharges payable exclusively out of the land. Such construction may be placed upon the gift if express powers of distress are given (*n*), or where the annual sums are referred to as "annuities or rentcharges" (*o*), or where the will contains other indications of intention that the gift is of a rentcharge (*p*).

Gift so as to devolve on death like real estate.

912. Although an annuity is personal estate, and is payable out of personal assets, it has this peculiarity, that it is capable of being given in such a manner as to devolve on death in the same manner as real estate (*q*): thus it may be given to a man and his heirs, a gift which confers an estate in fee descendible to the heir in default of alienation (*r*). Again, an annuity may be given to a man and the heirs of his body (*s*); but a limitation in the last-mentioned form does not constitute an estate tail, by reason of the Statute De Donis

(1911), 104 L. T. 710, C. A.; compare *Re Gerard (Lord) and Beecham's Contract*, [1894] 3 Ch. 295, 315, C. A.; and see note (*i*), p. 468, *ante*.

(*j*) *Parsons* v. *Parsons* (1869), L. R. 8 Eq. 260; *Taylor* v. *Martindale* (1841), 12 Sim. 158; *Joynt* v. *Richards* (1882), 11 L. R. Ir. 278; *Re Trenchard, Trenchard* v. *Trenchard*, [1905] 1 Ch. 82. A statutory charge of an annual sum on a statutory undertaking, comprising hereditaments corporeal and incorporeal, and personalty, creates an interest which is personal, not real, estate (*Re Baxter's Trusts, Malling* v. *Addison* (1910), 103 L. T. 427; affirmed (1911), 104 L. T. 710, C. A.

(*k*) *Heath* v. *Weston* (1853), 3 De G. M. & G. 601, 606, C. A.; *Mullins* v. *Smith* (1860), 1 Drew. & Sm. 204; and see title WILLS.

(*l*) *Gaskin* v. *Rogers* (1866), L. R. 2 Eq. 284, 291.

(*m*) *Shipperdson* v. *Tower* (1842), 1 Y. & C. Ch. Cas. 441; *Cornfield* v. *Wyndham* (1845), 2 Coll. 184; *Ward* v. *Grey* (1859), 26 Beav. 485. Where a testator bequeathed to each of his executors "the sum of £400 a year during the term of 5 years," these sums were held to be annuities payable out of income and not legacies payable out of *corpus*, but postponed in time of payment (*Scholefield* v. *Redfern* (1863), 2 Drew. & Sm. 173).

(*n*) *Turner* v. *Turner* (1783), Amb. 776; *Taylor* v. *Martindale* (1841), 12 Sim. 158, 160; *Patching* v. *Barnett* (1881), 51 L. J. (CH.) 74, C. A.; *Shipperdson* v. *Tower, supra*; *Sinnett* v. *Herbert* (1871), L. R. 12 Eq. 201; compare *Poole* v. *Heron* (1873), 42 L. J. (CH.) 348.

(*o*) *Ion* v. *Ashton* (1860), 28 Beav. 379; *Buckley* v. *Buckley* (1887), 19 L. R. Ir. 544.

(*p*) *Re Waring, Greer* v. *Waring*, [1896] 1 I. R. 427; *Lomax* v. *Lomax* (1849), 12 Beav. 285, 290; compare *Re Trenchard, Trenchard* v. *Trenchard, supra* (where the question was treated as one of construction).

(*q*) *Turner* v. *Turner* (1783), 1 Bro. C. C. 316, 323.

(*r*) *Bignold* v. *Giles* (1859), 4 Drew. 343, 346; and see title REAL PROPERTY AND CHATTELS REAL, p. 165, *ante*. Instances of limitations of this kind occurred in *Radburn* v. *Jervis* (1841), 3 Beav. 450; *Aubin* v. *Daly* (1820), 4 B. & Ald. 59; *Stafford (Earl)* v. *Buckley* (1750), 2 Ves. Sen. 170.

(*s*) *Holdernesse (Countess Dowager)* v. *Carmarthen (Marquis)* (1784), 1 Bro. C. C. 376; compare *Re Wynch's Trusts, Ex parte Wynch* (1854), 5 De G. M. & G. 188, C. A. (where an annuity was bequeathed to a married woman for life and the issue of her body).

Conditionalibus (*t*), which contains only the word "tenement," and an annuity, although a hereditament, is not a "tenement" (*u*). Where an annuity is limited to A and the heirs of his body, a conditional fee is created, and A can alienate the annuity as soon as an heir of his body is born, in the same manner as he could have done in the case of real estate before the Statute De Donis Conditionalibus (*a*). But although given with words of inheritance, an annuity is personalty for all purposes other than descent (*b*).

SECT. 3. Nature of an Annuity.

Part II.—Creation of Rentcharges and Annuities.

SECT. 1.—*Rentcharges.*

SUB-SECT. 1.—*In General.*

913. There are three modes in which a rentcharge may be created. It may be created (1) by instrument *inter vivos* (*c*), or (2) by testamentary disposition, or (3) by or under the powers of a statute (*d*).

Modes of creation.

SUB-SECT. 2.—*Creation by Instrument Inter Vivos.*

914. To create a rentcharge by an instrument *inter vivos* the instrument must as a general rule be under seal; for a rentcharge is an incorporeal hereditament (*e*), and it is settled that, whether for a freehold or a chattel interest, such a hereditament cannot be so

Deed necessary.

(*t*) Stat. (1285) 13 Edw. 1, c. 1; and see title REAL PROPERTY AND CHATTELS REAL, pp. 172, 241, 242, *ante*.

(*u*) *Bignold* v. *Giles* (1859), 4 Drew. 343, 347; see *Turner* v. *Turner* (1783), 1 Bro. C. C. 316, 323. In this respect an annuity differs from a rentcharge; see Co. Litt. 19 b.

(*a*) *Stafford (Earl)* v. *Buckley* (1750), 2 Ves. Sen. 170, 180; Co. Litt. 20 a; *Re Rivett-Carnac's (Sir J.) Will* (1885), 30 Ch. D. 136, *per* CHITTY, J., at p. 141; compare *A.-G.* v. *Richmond (Duke)* (No. 2), [1907] 2 K. B. 940, 973; and see title REAL PROPERTY AND CHATTELS REAL, p. 172, *ante*.

(*b*) *Aubin* v. *Daly* (1820), 4 B. & Ald. 59; *Radburn* v. *Jervis* (1841), 3 Beav. 450

(*c*) For various forms of grant of a rentcharge, see Encyclopædia of Forms and Precedents, Vol. I., pp. 545 *et seq.*, Vol. II., pp. 17, 19, Vol. VI., pp. 483, 487, Vol. XIII., pp. 296, 307, 383. For form of a grant in lieu of dower, see *ibid.*, Vol. V., p. 475.

(*d*) A claim to rent on the ground of prescription is mentioned by Sir E. COKE (Co. Litt. 114 a, 144 a), and it has been said that the title by prescription is applicable to incorporeal hereditaments (*Beauchamp (Earl)* v. *Winn* (1873), L. R. 6 H. L. 223, 238). But no modern instance of such a claim can be found in the books, and it is expressly excepted from the Prescription Act, 1832 (2 & 3 Will. 4, c. 71), s. 1. From long payment of rent, however, the courts have presumed arrangements made many years ago for such payment; see *Adnam* v. *Sandwich* (1877), 2 Q. B. D. 485, 492, C. A.; *Foley's Charity Trustees* v. *Dudley Corporation*, [1910] 1 K. B. 317, 323, C. A.; *Sanders* v. *Sanders* (1881), 19 Ch. D. 373, C. A.; *Re Bomford's Estate, Bomford* v. *Neville*, [1904] 1 I. R. 474; *Bridgewater (Duke)* v. *Edwards* (1734), 6 Bro. Parl. Cas. 368. In the case of charitable rentcharges, their existence may be proved by long continued payment; see title CHARITIES, Vol. IV., p. 203. As to prescription, see title EASEMENTS AND PROFITS À PRENDRE, Vol. XI., pp. 256 *et seq.*

(*e*) 3 Cru. Dig., 4th ed., 289; and see p. 467, *ante*.

SECT. 1. Rentcharges.

created (*f*) otherwise than by deed (*g*). A rentcharge may be created by deed poll (*h*).

Agreement to grant a rentcharge.

An agreement to grant a rentcharge, issuing out of the land of the grantor, which is evidenced by a writing not under seal may be enforced (*i*). Such agreement may entitle the grantee to have the rentcharge further secured by the personal covenant of the grantor (*k*).

Estates and interests in rentcharges.

915. A rentcharge may be created for an estate in fee simple (*l*), in fee tail (*m*), for life (*n*), or for a term of years (*o*). Again, a

(*f*) As to the grant of a rentcharge by one coparcener to another, for equality of partition, see title PARTITION, Vol. XXI., p. 815, note (*f*).

(*g*) Co. Litt. 169 a; *Hewlins* v. *Shippam* (1826), 5 B. & C. 221, 229; see *Bird* v. *Higginson* (1837), 6 Ad. & El. 824, Ex. Ch.; and see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 361. In the case of rentcharges created by deeds before 1882, the deed usually provided express remedies for enforcing payment out of the land by distress, entry, and the limitation of a term of years. Where the instrument comes into operation after the 31st December, 1881, the rentcharger can now by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 44 (see p. 514, *post*), himself enforce payment by distress, entry, or a demise for a term. A rentcharge is also frequently secured by the personal covenant of the creator, and sometimes special powers are given for the appointment of a receiver; see p. 520, *post*. An ordinary instance of the creation by deed in modern times of a rentcharge occurs in the limitation of a jointure usually inserted in a marriage settlement of real estate; see the forms in Davidson, Conveyancing Precedents, 3rd ed., Vol. III., pp. 982 *et seq.*, and Mr. Waley's remarks on their proper framework, *ibid.*, 310 *et seq.*; see also title SETTLEMENTS. A jointure rentcharge *primâ facie* takes effect on the husband's death (*Re De Hoghton, De Hoghton* v. *De Hoghton*, [1896] 2 Ch. 385). Precedents of various documents relating to the creation and assignment of rentcharges will be found in the Encyclopædia of Forms and Precedents, Vol. I., pp. 543 *et seq.*

The stamp duty on a grant of a rentcharge is the same as on a conveyance of land, whether the grant is for valuable consideration (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 54; see title SALE OF LAND), or voluntary (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 74); see title REVENUE, pp. 700 *et seq.*, *post*.

(*h*) Littleton's Tenures, s. 218; Gilbert on Rents, 38; *Grenon* v. *Rawson* (1726), Cas. *temp.* King, 57.

(*i*) *Jackson* v. *Lever* (1792), 3 Bro. C. C. 605; *Coles* v. *Trecothick* (1804), 9 Ves. 234, 246; *Wellesley* v. *Wellesley* (1839), 4 My. & Cr. 561, 579; and see *Kenney* v. *Wexham* (1822), Madd. & G. 355; *Mortimer* v. *Capper* (1782), 1 Bro. C. C. 156; *Pope* v. *Roots* (1774), 1 Bro. Parl. Cas. 370; *Carbery* (*Lord*) v. *Weston* (1757), 1 Bro. Parl. Cas. 429.

(*k*) *Bower* v. *Cooper* (1843), 2 Hare, 408.

(*l*) Co. Litt. 144 a; 3 Cru. Dig., 4th ed., 289; *Gilbertson* v. *Richards* (1859), 4 H. & N. 277, 297.

(*m*) *Ibid.* For instances, see *Chaplin* v. *Chaplin* (1734), 3 P. Wms. 229; *Robinson* v. *Giffard*, [1903] 1 Ch. 865, 871; *A.-G.* v. *Richmond* (*Duke*) (No. 2), [1907] 2 K. B. 940. Where a rentcharge is granted to A in tail without any limitation over in fee, A on disentailing acquires no more than a base fee (Co. Litt. 298 a, note (2); *Chaplin* v. *Chaplin*, *supra*). As to barring an entail in a rentcharge, see also *Whitfield* v. *Fausset* (1750), 1 Ves. Sen. 387, 391. As to base fees, see title REAL PROPERTY AND CHATTELS REAL, pp. 262 *et seq.*, *ante*.

(*n*) Co. Litt. 144 a; 3 Cru. Dig., 4th ed., 289. For instances, see *Smith* v. *Farnaby* (1666), Cart. 52; *Salter* v. *Butler* (1602), Cro. Eliz. 901; *Cupit* v. *Jackson* (1824), 13 Price, 721; and for a limitation of a jointure rentcharge to a surviving wife during her life, see *Hambro* v. *Hambro*, [1894] 2 Ch. 564.

(*o*) *Re Fraser, Lowther* v. *Fraser*, [1904] 1 Ch. 726, C. A. A rentcharge held by a person as tenant at will is referred to in the Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 7; and see title LIMITATION OF ACTIONS, Vol. XIX., p. 123.

rentcharge may be created for an estate *pur autre vie* (*p*), and also in remainder after an estate for life (*q*).

Time of commencement.

916. A rentcharge already created cannot at common law be granted so as to commence *in futuro* (*r*), but may be so granted when it is created *de novo* (*s*). The time of commencement must of course be within the period limited by the rule against perpetuities (*t*).

Form of instrument of creation.

917. There are two forms of words in which rentcharges may be created by an instrument *inter vivos*, namely, (1) by common law grant or reservation (*u*), and (2) by a limitation taking effect under the Statute of Uses (*a*). If the instrument creating the rentcharge operates as a common law grant, the grantee does not obtain seisin in deed of the rentcharge until he has actually received part of it (*b*), and he could not be treated as having been in the "actual possession" of the rentcharge required in the case of a county

(*p*) 3 Cru. Dig., 4th ed., 289. As to such an estate, see title REAL PROPERTY AND CHATTELS REAL, pp. 178 *et seq.*, *ante*.

(*q*) *Salter* v. ——— (1602), Yelv. 9; Co. Litt. 298 a; see also *Smith* v. *Farnaby* (1666), Cart. 52.

(*r*) 3 Cru. Dig., 4th ed., 293; Challis, Law of Real Property, 3rd ed., pp. 111, 112; and see title REAL PROPERTY AND CHATTELS REAL, pp. 216 *et seq.*, *ante*.

(*s*) 3 Cru. Dig., 4th ed., 293; see Gilbert on Rents, 60; *Sutton's Hospital Case* (1612), 10 Co. Rep. 23 a, 27 b; *Throckmerton* v. *Tracy* (1555), Plowd. 145, 156; title REAL PROPERTY AND CHATTELS REAL, p. 216, note (*p*), *ante*.

(*t*) See title PERPETUITIES, Vol. XXII., pp. 299, 300 *et seq.* The statutory powers and remedies for recovering a rent properly limited are not within the rule (Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 6; see title PERPETUITIES, Vol. XXII., p. 299, note (*d*); and p. 517, *post*).

(*u*) Where a rentcharge is created by common law reservation there is in effect a grant of the land by the owner thereof and a grant of the rent by the grantee of the land (*Browning* v. *Beston* (1555), Plowd. 134, *arguendo*; 3 Preston, Abstracts of Titles, 55; compare *Ewart* v. *Graham* (1859), 7 H. L. Cas. 331, 345; *Durham and Sunderland Rail. Co.* v. *Walker* (1842), 2 Q. B. 940, 967, Ex. Ch.). And the conveyance should be executed by the grantee (*Gilbertson* v. *Richards* (1859), 4 H. & N. 277). As to the distinctions between the grant of a rentcharge and the reservation of a rentcharge, see, further, Co. Litt. 148 b.

(*a*) 27 Hen. 8, c. 10; see *ibid.*, ss. 4, 5; 1 Sanders, Uses and Trusts, 4th ed., p. 105; 2 *ibid.*, p. 32; Sugden's Gilbert on Uses and Trusts, p. 193, note (4); see Encyclopædia of Forms and Precedents, Vol. I., p. 547; Vol. XII., pp. 598 *et seq.*; Vol. XIII., pp. 296 *et seq.* Ordinarily a rentcharge is created under the Statute of Uses (27 Hen. 8, c. 10) by a limitation of land to A and his heirs, to the use that B and his heirs shall receive a rentcharge. Should, however, the land be limited to A and his heirs to the use of B and his heirs to the use that C and his heirs shall receive a rentcharge, this does not transgress the rule that a use cannot be limited upon a use. The second use does not create a trust, but gives a seisin in the rent to C (*Hanly* v. *Carroll*, [1907] 1 I. R. 166, 173; *Gilbertson* v. *Richards* (1859), 4 H. & N. 277, 297; compare title REAL PROPERTY AND CHATTELS REAL, pp. 271 *et seq.*, *ante*). Where A granted land to B and his heirs to the use that A and his heirs should receive a rentcharge, and subject thereto to dower uses in favour of B, a subsequent common law grant in the deed of the same rentcharge by B to A was treated as inoperative (*Hartley* v. *Maddocks*, [1899] 2 Ch. 199).

(*b*) Co. Litt. 160 a; see title REAL PROPERTY AND CHATTELS REAL, p. 290, *ante*; Challis, Law of Real Property, 2nd ed., pp. 206, 209; 3rd ed., pp. 233, 236.

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voter by the Representation of the People Act, 1832 (*c*). If, however, the instrument operates under the Statute of Uses (*d*), the grantee acquires seisin in deed of the rentcharge by virtue of the statute (*e*), and, even before he receives it, has the "actual possession" required for franchise (*f*).

Lien securing a rentcharge.

918. A lien on land for the purpose of securing a rentcharge may arise from a covenant (*g*), or from a clause appointing a receiver (*h*).

Estates and interests out of which rentcharge created.

919. A rentcharge may be created out of an estate in fee simple (*i*), in fee tail (*k*), or an estate for life (*l*), whether the land be freehold (*m*) or copyhold (*n*). It may also be created out of a term for years (*o*); but in this case the interest so created is a chattel interest (*p*).

Where land is held by A and B as tenants in common (*q*) and they make a common law grant to C of a rent of 20*s*. per annum, C has two rents of 20*s*. (*r*). If, however, A and B hold as joint tenants, it seems that C only has a single rent. If A and B are

(*c*) 2 & 3 Will. 4, c. 45, s. 26; see *Murray* v. *Thorniley* (1846), 2 C. B. 217; *Hayden* v. *Tiverton Overseers* (1846), 4 C. B. 1; *Orme's Case* (1872), L. R. 8 C. P. 281; and see title ELECTIONS, Vol. XII., p. 148, note (*o*).

(*d*) 27 Hen. 8, c. 10; see title REAL PROPERTY AND CHATTELS REAL, pp. 271 *et seq.*, *ante*.

(*e*) Statute of Uses 27 (Hen. 8, c. 10), s. 4.

(*f*) *Heelis* v. *Blain* (1864), 18 C. B. (N. S.) 90; *Hadfield's Case* (1873), L. R. 8 C. P. 306; *Lowcock* v. *Broughton Overseers* (1883), 12 Q. B. D. 369.

(*g*) *Wellesley* v. *Wellesley* (1839), 4 My. & Cr. 561, 579; *White* v. *Anderson* (1850), 1 I. Ch. R. 419; see *Mornington* (*Countess*) v. *Keane* (1858), 2 De G. & J. 292, C. A.; *Watson* v. *Sadleir* (1829), 1 Mol. 585; compare *Dixon* v. *Gayfere* (1857), 1 De G. & J. 655.

(*h*) *Cradock* v. *Scottish Provident Institution*, [1893] W. N. 146; affirmed, [1894] W. N. 88, C. A.

(*i*) This is usually the estate out of which a rentcharge is granted.

(*k*) See *Smith* v. *Stapleton* (1573), Plowd. 430, 436.

(*l*) See *Monypenny* v. *Monypenny* (1861), 3 De G. & J. 572; 9 H. L. Cas. 114 (where a man purported to grant a rentcharge to his surviving wife during her life out of lands of which he himself was only tenant for life, and the deed was construed as containing a covenant binding his personal estate); compare *Teasdale* v. *Teasdale* (1726), Cas. *temp.* King, 59; *Ford* v. *Tynte* (1865), 2 De G. J. & Sm. 557, C. A.

(*m*) This is almost invariably the nature of the tenure of lands charged with a rentcharge.

(*n*) See Lumley on Annuities, p. 227.

(*o*) Co. Litt. 147 b; *Mounson* v. *Redshaw* (1668), 1 Wms. Saund. 186 e; *Butt's Case* (1600), 7 Co. Rep. 23 a; *Re Fraser, Lowther* v. *Fraser*, [1904] 1 Ch. 111, 726, C. A.

(*p*) *Re Fraser, Lowther* v. *Fraser, supra*; Co. Litt. 147 b; *Butt's Case* (1600), 7 Co. Rep. 23 a; *Saffery* v. *Elgood* (1834), 1 Ad. & El. 191; Copinger on Rents, 1886 ed., p. 112. In the case of a rentcharge created out of a term of years it should be noted that the Statute of Uses (27 Hen. 8, c. 10) does not apply; see title REAL PROPERTY AND CHATTELS REAL, p. 274, *ante*; also that the remedies given by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 44 (see p. 514, *post*), may not be available, unless the word "land" in *ibid.*, s. 44 (which word by *ibid.*, s. 2 (ii.), includes "land of any tenure"), includes leaseholds; as to this, see Challis, Law of Real Property, 3rd ed., p. 424; Co. Litt. 93 b; *Re Kershaw, Drake* v. *Kershaw* (1888), 37 Ch. D. 674, 677.

(*q*) As to tenancy in common, see title REAL PROPERTY AND CHATTELS REAL, pp. 206 *et seq.*, *ante*.

(*r*) Co. Litt. 197 a.

joint tenants (*s*), and the grant is made by A only, and he subsequently releases to B and dies leaving B surviving, the rent will continue after A's death (*a*); but if A predeceases B without having released to him, the rent ceases on A's death (*b*).

Perpetual rentcharge cannot be granted with fee simple.

920. A person cannot at the same moment grant a perpetual rentcharge issuing out of freehold or copyhold land and also the fee simple in the same land to the same person (*c*). Where a copyholder covenants to surrender his copyholds by way of mortgage and by the same deed grants to the mortgagee a power to distrain for the interest on the principal mortgage debt, the grant operates as an immediate grant of a rentcharge, which, however, will cease upon the admittance of the mortgagee (*c*).

Estate of grantor must be as great as the interest created.

921. The grantor of a rentcharge must have an estate or interest in the land out of which the rentcharge is made to issue, as great as if not greater than the estate or interest created in the rentcharge (*d*). If he purports by deed to create the rentcharge for a greater estate or interest than that which he has in the land, the rentcharge is valid in so far as his estate or interest in the land is able to support it (*e*). Apparent exceptions to the general rule which requires the grantor's estate in the land to equal or exceed the estate or interest in the rentcharge granted are afforded by various statutory enactments, the general effect of which is to empower limited owners or parties under personal disabilities (*f*) to dispose of land in consideration of a rentcharge. But, at least in the case of sales for building purposes by a tenant for life under statutory powers (*g*), this apparent exception is not a real exception; for, although the limited owner may be empowered to convey in fee simple subject to a "reservation" of a rentcharge (*h*), the transaction appears to take effect as a grant of the rentcharge by the grantee in fee simple of the land (*i*).

(*s*) As to joint tenancy, see title REAL PROPERTY AND CHATTELS REAL, pp. 199 *et seq.*, *ante*.

(*a*) Co. Litt. 185 a.

(*b*) *Ibid.*, 184 b; as to coparceners, see Co. Litt. 185 a.

(*c*) *Freeman* v. *Edwards* (1848), 2 Exch. 732, 739.

(*d*) *Doe* d. *Garrod* v. *Olley* (1840), 12 Ad. & El. 481, 487; *Freeman* v. *Edwards* (1848), 2 Exch. 732, 739; *Jolly* v. *Arbuthnot* (1859), 4 De G. & J. 224, 241.

(*e*) *Saffery* v. *Elgood* (1834), 1 Ad. & El. 191; Co. Litt. 147 b. Thus, if a rent in fee is granted by a tenant in tail, it will in any case be valid during his life, but on his death it will determine (1 Co. Rep. 48), unless he bars the entail, in which case it will continue (*ibid.*); and see *Monypenny* v. *Monypenny* (1861), 3 De G. & J. 572; 9 H. L. Cas. 114; *Teasdale* v. *Teasdale* (1726), Cas. temp. King, 59; *Ford* v. *Tynte* (1865), 2 De G. J. & Sm. 557, C. A.; and, as to the rights of rentchargers and annuitants as affected by the quantum of the donor's estate, see, further, pp. 497 *et seq.*, *post*.

(*f*) See, *e.g.*, the Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 10; Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 9.

(*g*) Under the Settled Land Acts; see titles SALE OF LAND; SETTLEMENTS.

(*h*) See the Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 9.

(*i*) *Ibid.*, s. 9; compare *Ewart* v. *Graham* (1859), 7 H. L. Cas. 331, 345; *Durham and Sunderland Rail. Co.* v. *Walker* (1842), 2 Q. B. 940, 967, Ex. Ch.

As to sales of land in consideration of a perpetual rentcharge generally,

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Necessity for registration.

922. Any rentcharge granted since the 26th April, 1855, otherwise than by marriage settlement, for one or more life or lives or for any term of years or greater estate determinable on one or more life or lives does not affect any lands, tenements, or hereditaments as against purchasers, mortgagees, or creditors, unless registered at the Land Registry (*j*). An unregistered rentcharge is, however, valid as against persons taking with notice of it (*k*).

SUB-SECT. 3.—*Creation by Testamentary Disposition.*

Creation by will or codicil.

923. A rentcharge, that is, an interest in the nature of a rentcharge, may be created by will (*l*), for which purpose it is unnecessary to use any particular form of words. The question whether a rentcharge is created by a will is one of construction, and the indication of the testator's intention to create an interest having the incidents of a legal rentcharge is sufficient (*m*). Thus,

the land of a lunatic can, with the sanction of the judge in lunacy, be sold for such a consideration (*Re Ware (a Person of Unsound Mind)*, [1892] 1 Ch. 344, C. A.; see title LUNATICS AND PERSONS OF UNSOUND MIND, Vol. XIX., p. 443). The land of a municipal corporation can also, with the sanction of the Local Government Board, be sold for a like consideration (*Scarborough Corporation* v. *Cooper*, [1910] 1 Ch. 68; see title LOCAL GOVERNMENT, Vol. XIX., p. 318). It seems, however, that the ordinary power of sale and exchange does not authorise a sale in consideration of a rentcharge (*Read* v. *Shaw* (1807), Sugden, Powers, 8th ed., p. 864). Sales and conveyances of land to purchasers in consideration of rentcharges are common in some parts of the north of England. Precedents of such conveyances will be found in the Encyclopædia of Forms and Precedents, Vol. XII., pp. 594 *et seq.* The position, on the death of such a purchaser, of his legal personal representative is dealt with in the Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), s. 28; and see the text, *infra*. No vendor's lien on land arose in favour of a vendor who agreed to sell the land in consideration of a life annuity to be secured by bond (*Dixon* v. *Gayfere* (1857), 1 De G. & J. 655; and see the earlier decisions there discussed). Where, under the powers of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18) s. 10 (amended by the Lands Clauses Consolidation Act Amendment Act, 1860 (23 & 24 Vict. c. 106), ss. 1, 4; see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., p. 59), land was agreed to be sold to a company in consideration of a rentcharge, and before conveyance the rentcharge fell into arrear, the vendor had no lien on the land for the arrears (*Jersey (Earl)* v. *Briton Ferry Floating Dock Co.* (1869), L. R. 7 Eq. 409). On the other hand, where, after conveyance, the rentcharge fell into arrear, the vendor was allowed, notwithstanding the appointment of a receiver of the tolls, profits, and income of the undertaking, to distrain for the arrears upon the land, as well where a power to distrain was expressly given by the conveyance (*Eyton* v. *Denbigh, Ruthin, and Corwen Rail. Co.* (1868), L. R. 6 Eq. 14) as where it arose under the Landlord and Tenant Act, 1730 (4 Geo. 2, c. 28), s. 5 (*Eyton* v. *Denbigh, Ruthin, and Corwen Rail. Co., Rickman* v. *Johns* (1868), L. R. 6 Eq. 488).

A power to invest upon freehold or leasehold ground rents may authorise the purchase of such rents (*Re Mordan, Legg* v. *Mordan*, [1905] 1 Ch. 515, C. A.).

(*j*) Judgments Act, 1855 (18 & 19 Vict. c. 15), s. 12; Land Charges Act, 1900 (63 & 64 Vict. c. 26), s. 1.

(*k*) *Greaves* v. *Tofield* (1880), 14 Ch. D. 563, C. A.

(*l*) See, *e.g.*, *Ramsey* v. *Thorngate* (1849), 16 Sim. 575; *Gully* v. *Davis* (1870), L. R. 10 Eq. 562. As to remedies for enforcing payment, see p. 514, *post*; compare pp. 466, 472, note (*g*), *ante*; and see title WILLS. For form of devise of rentcharge, see Encyclopædia of Forms and Precedents, Vol. XV., pp. 520, 628.

(*m*) See *Ramsey* v. *Thorngate*, *supra*; *Re Trenchard, Trenchard* v.

a rentcharge is created where a testator devises land to one person charged with the payment of an annual sum to another (*n*). A gift by will of a rentcharge issuing out of land is a gift of an interest in the land itself and necessarily specific (*o*).

SUB-SECT. 4.—*Creation by or under the Powers of a Statute.*

On compulsory purchase.

924. There are numerous statutory provisions as to the creation of rentcharges. Thus, under the Lands Clauses Consolidation Acts, 1845 and 1860 (*p*), the absolute owner of land, whether under disability or not, can sell land to an undertaking in consideration of an annual rentcharge to be charged on the tolls or rates of the undertaking or to be otherwise secured as may be agreed.

To secure repayment of advances for improvements.

925. Further powers exist for the creation of rentcharges either for repayment of advances made by the Treasury for drainage works (*q*), or for the commutation of customary, prescriptive, or other similar obligations to repair, maintain, or do any works (*r*), or for repaying advances made under the Improvement of Land Act, 1864 (*s*), and under other Acts authorising the charging of land with the expenses of improvement (*t*).

By local sanitary authorities.

926. Local authorities may create rentcharges in respect of advances made for private improvements (*u*). These rentcharges must be registered (*v*).

By parties to a partition.

927. Where partitions are made by order of the Board of Agriculture and Fisheries, compensation for the purpose of producing equality may be given by means of perpetual rentcharges charged on the whole or part of the land partitioned (*w*).

Trenchard, [1905] 1 Ch. 82; *Re Waring, Greer* v. *Waring*, [1896] 1 I. R. 427; *Patching* v. *Barnett* (1881), 51 L. J. (CH.) 74, C. A.; *Sinnett* v. *Herbert* (1871), L. R. 12 Eq. 201; *Ion* v. *Aston* (1860), 28 Beav. 379; *Lomax* v. *Lomax* (1849), 12 Beav. 285, 290. Of course, the duration of the rentcharge depends in each case on the words of limitation used; see p. 484, *post*.

(*n*) *Sollory* v. *Leaver* (1869), L. R. 9 Eq. 22; *Buttery* v. *Robinson* (1826), 3 Bing. 392. Distinguish cases where trustees take the legal estate under a devise of land to them upon trust thereout to pay an annual sum (*Fenwick* v. *Potts* (1856), 8 De G. M. & G. 506, C. A.; *Doe* d. *White* v. *Simpson* (1804), 5 East, 162; see *Adams* v. *Adams* (1845), 6 Q. B. 860).

(*o*) *Creed* v. *Creed* (1844), 11 Cl. & Fin. 491, 508, 510, H. L.; *Pitt* v. *Dacre* (*Lord*) (1876), 3 Ch. D. 295, 299.

(*p*) 8 & 9 Vict. c. 18, ss. 10, 11; 23 & 24 Vict. c. 106, ss. 2, 4; and see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 59, 60 (where the remedies available for enforcing payment of such rentcharges are stated).

(*q*) Public Money Drainage Act, 1846 (9 & 10 Vict. c. 101), ss. 34 *et seq.*; and see title LAND IMPROVEMENT, Vol. XVIII., pp. 278, 304, 305.

(*r*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), ss. 34, 35.

(*s*) 27 & 28 Vict. c. 114, ss. 49 *et seq.*

(*t*) See title LAND IMPROVEMENT, Vol. XVIII., pp. 296, 297, 301, 304, 305. For forms of assignment of rentcharge under the Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), see Encyclopædia of Forms and Precedents, Vol. I., p. 568, Vol. VII., p. 42.

(*u*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 240.

(*v*) *Ibid.*, s. 241; and see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., p. 381.

(*w*) Inclosure Act, 1857 (20 & 21 Vict. c. 31), ss. 8—11; and see title PARTITION, Vol. XXI., p. 828.

SECT. 1. Rentcharges.

By limited owners of settled land.

928. As regards settled land, the court may authorise a tenant for life to grant the land for building or mining purposes in perpetuity at a fee farm rent (*x*). The power only applies to districts as to which the evidence mentioned in the Settled Land Act, 1882 (*y*), is produced to the court. Where, under the above power, a grant in fee simple is made for building purposes, with a reservation of a rentcharge, the reservation operates to create a rentcharge in fee simple issuing out of the land granted (*z*) and having incidental thereto the powers and remedies conferred by the Conveyancing and Law of Property Act, 1881 (*a*).

By registered proprietors of land.

929. A registered proprietor of land may charge it with an annuity or other periodical payment by way of registered charge (*b*). In such a case the powers of the Land Transfer Act, 1875 (*c*), apply.

On enfranchisement of copyholds.

930. In the case of compulsory enfranchisement under the Copyhold Act, 1894 (*d*), the lord's compensation must in certain cases be, and in the case of a voluntary enfranchisement under that statute the consideration may wholly or partly be, an annual rentcharge issuing out of the land enfranchised (*e*).

On sale for charitable uses.

931. Rentcharges may be created upon sale for full valuable consideration of land for charitable uses (*f*).

Necessity for registration.

932. A rentcharge created, under any statute, since the 1st January, 1889, otherwise than by deed, for securing to any person moneys spent or expenses incurred by him, or moneys advanced by him for repaying moneys spent or expenses incurred by any other person, under such statute, is void as against any person taking any interest in the land charged unless registered in the Land Registry (*g*).

(*x*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 10; see title SETTLEMENTS.

(*y*) 45 & 46 Vict. c. 38, s. 10.

(*z*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 9.

(*a*) 44 & 45 Vict. c. 41, s. 44; and see p. 514, *post*.

(*b*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 9 (3).

(*c*) 38 & 39 Vict. c. 89, s. 23. It would seem that the powers of the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 44 (see p. 514, *post*), also apply; and see Land Transfer Rules, 1903, rr. 160, 178—181; titles MORTGAGE, Vol. XXI., pp. 84 *et seq.*; REAL PROPERTY AND CHATTELS REAL, p. 317, *ante*.

(*d*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 8; and see title COPYHOLDS, Vol. VIII., p. 119.

(*e*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 17; and see title COPYHOLDS, Vol. VIII., pp. 119, 120. As to the apportionment and redemption of such rentcharges, see *ibid.*, pp. 120, 121. Previous Copyhold Acts provided for the creation of rentcharges: (1) upon enfranchisements under those Acts (see Copyhold Acts, 1843 (6 & 7 Vict. c. 23), ss. 1, 2; 1858 (21 & 22 Vict. c. 94), s. 15); and (2) as commutation for the lord's rights to fines etc. either compulsorily (Copyhold Act, 1841 (4 & 5 Vict. c. 35), s. 36) or voluntarily (*ibid.*, s. 52). Rentcharges created under the last-mentioned provisions are not affected by the Copyhold Act, 1894 (57 & 58 Vict. c. 46) (*ibid.*, s. 100).

(*f*) Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), s. 4 (5); and see title CHARITIES, Vol. IV., pp. 128, 129.

(*g*) Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51), s. 12. A charge under the Land Drainage Act, 1861 (24 & 25 Vict. c. 133), s. 35 (see p. 477, *ante*), is within this provision (Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51), s. 4).

SECT. 2.—*Annuities.*

SUB-SECT. 1.—*Creation by Instrument Inter Vivos.*

By deed.

933. To create an annuity by instrument *inter vivos*, a deed, as a general rule, is necessary (*h*). An annuity is frequently secured by a personal covenant (*i*), and, where it is payable for the separate use of a married woman, a restraint on anticipation may be attached (*k*).

Parol grant.

934. A parol grant of an annuity would appear to offend against the Statute of Frauds (*l*), not being a contract to be performed within a year (*m*). But, although a deed may be necessary for the express

(*h*) *Re Locke* (1823), 2 Dow. & Ry. (K. B.) 603, 606; *Nield* v. *Smith* (1808), 14 Ves. 491; see *Cupit* v. *Jackson* (1824), 13 Price, 721. The grant of life annuities by deed was largely in vogue during the seventeenth, eighteenth, and the early part of the nineteenth centuries as a means of raising money and evading the usury laws, a clause for redemption being sometimes inserted; see *Bulwer* v. *Astley* (1844), 1 Ph. 422; *Re Muffett, Jones* v. *Mason* (1888), 39 Ch. D. 534, 536. The last-mentioned laws, which prohibited loans at a higher rate of interest than 5 per cent., were contained in the following statutes:—(1713) 13 Anne, c. 15 (Statutes of the Realm); Bank of England Act, 1833 (3 & 4 Will. 4, c. 98), s. 7; Gaming Acts, 1835 (5 & 6 Will. 4, c. 41) and 1839 (2 & 3 Vict. c. 37). Doubts existed as to the validity of these annuity transactions, and accordingly divers subterfuges were resorted to. In practice, the parties kept these loans as secret as possible and disguised the true nature of the transactions, giving them the appearance of mere purchases and sales, and frequently omitting the clause for redemption; see Lumley on Annuities, 1833, Introduction, pp. xviii., xix. With the view of dealing with the mischief and protecting minors, the legislature passed a series of Acts—(1776) 17 Geo. 3, c. 26; (1813) 53 Geo. 3, c. 141; (1822) 3 Geo. 4, c. 92; (1826) 7 Geo. 4, c. 75—requiring, among other things, enrolment. But the true root of the evil was not removed until 1854, when the usury laws were repealed (Usury Laws Repeal Act, 1854 (17 & 18 Vict. c. 90); see title MONEY AND MONEY-LENDING, Vol. XXI., p. 42).

According to the present practice the grant of an annuity is sometimes, but rarely, resorted to as a means of raising money (Davidson, Conveyancing Precedents, 3rd ed., Vol. V., p. 99); and much of the older law in relation to the grant of annuities has become obsolete. On the other hand, annuities are not infrequently purchased from and granted by insurance companies. Forms of annuity deeds will be found in Davidson, Conveyancing Precedents, 3rd ed., Vol. V., pp. 103 *et seq.*, and precedents of various documents relating to the creation and assignment of annuities will be found in the Encyclopædia of Forms and Precedents, Vol. I., pp. 503 *et seq.*

The stamp duty on a grant of an annuity is the same as on a conveyance on sale of land (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 54; see title SALE OF LAND, whether the grant is for valuable consideration (see *ibid.*) or voluntary (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 74; and see title REVENUE, pp. 700 *et seq.*, *post.*

(*i*) Where a life annuity is secured by a personal covenant, the covenantor cannot on originating summons obtain a declaration as to the evidence to be produced of the continuance of the annuitant's life (*Hunt* v. *Hunt* (1908), 97 L. T. 822, C. A.). As to bonds to secure annuities, see title BONDS, Vol. III., pp. 81, 82, 94; and, as to the stamp duty on such bonds, see *ibid.*, p. 104.

(*k*) *Macnaghten* v. *Paterson*, [1907] A. C. 483, 492, P. C.; and see title HUSBAND AND WIFE, Vol. XVI., p. 446, note (*t*).

(*l*) 29 Car. 2 c. 3, s. 4.

(*m*) See *Sweet* v. *Lee* (1841), 3 Man. & G. 452; *Knowlman* v. *Bluett* (1874), L. R. 9 Exch. 1, 307, Ex. Ch.; and see title CONTRACT, Vol. VII., pp. 361, 365.

SECT. 2. Annuities.

grant of an annuity, an agreement in writing, not under seal, for the grant of an annuity is an agreement of which the courts may decree specific performance (*n*).

Necessity for registration.

935. An annuity granted since the 26th April, 1855, otherwise than by marriage settlement, for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, does not affect any hereditaments, as against purchasers, mortgagees, or creditors, unless registered (*o*).

SUB-SECT. 2.—*Creation by Testamentary Disposition: Payment of Value in Cash.*

Creation by will.

936. Annuities can be created by will; and in a will, according to the general rule, annuities are included in the term "legacies" (*p*). The most common form of annuities created by will are life annuities; but a will may create annuities for different periods, or annuities which are perpetual (*q*).

Forms.

937. The creation by will of a life annuity may take any one of the following forms, namely:—

(1) Simple bequest.

(1) A simple bequest of an annuity.

In this case, where the testator's estate is sufficient, the annuitant cannot claim to be paid in cash the value of the annuity (*a*); but he can claim to have such a security set apart as will make it practically certain that the annuity will be paid (*b*). Where the estate is insufficient, the annuitant can claim that the annuity shall be valued, and that the amount of the valuation, subject to an abatement in proportion to the abatement of the pecuniary legacies, shall be paid to him in cash (*c*).

(2) Direction or power to set apart fund.

(2) A simple bequest of an annuity, followed by a direction to the trustees to set apart a fund to provide for the annuity, or a power to do so.

In these cases, where the estate is sufficient to set apart the requisite fund, the annuitant, although he may be entitled to have any deficiency of income made up out of capital, cannot claim to have the value of the annuity paid over to him (*d*). Where the estate is insufficient to set apart the requisite fund and also to pay in full any pecuniary legacies bequeathed by the will, but is

(*n*) *Pritchard* v. *Ovey* (1820), 1 Jac. & W. 396; *Swift* v. *Swift* (1841), 3 I. Eq. R. 267; *Keenan* v. *Handley* (1864), 2 De G. J. & Sm. 283, C. A.

(*o*) Judgments Act, 1855 (18 & 19 Vict. c. 15), s. 12; see p. 499, *post*. As to notice, and as to the registration of rentcharges, see p. 478, *ante*.

(*p*) See p. 470, *ante*.

(*q*) As to wills generally, see title WILLS. For forms of bequest of annuity, see Encyclopædia of Forms and Precedents, Vol. XV., pp. 427, 462, 480, 481, 594 *et seq.*

(*a*) *Re Ross, Ashton* v. *Ross*, [1900] 1 Ch. 162, 165.

(*b*) *Harbin* v. *Masterman*, [1896] 1 Ch. 351, 355, C. A.; and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 262.

(*c*) *Wroughton* v. *Colquhoun* (1847), 1 De G. & Sm. 357; *Re Ross, Ashton* v. *Ross, supra*; *Franks* v. *Cooper* (1799), 4 Ves. 763. As to the application of this rule where the annuity is limited to one for life or until he shall do something whereby the same, if belonging to him absolutely, would become vested in some other person, see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 277.

(*d*) *Wright* v. *Callender* (1852), 2 De G. M. & G. 652, C. A.; *Re Cottrell, Buckland* v. *Bedingfield*, [1910] 1 Ch. 402, 407.

sufficient to pay in full the legacies and also the value of the annuity as at the testator's death, the annuity should be valued as at the death according to the Government scale, and the valuation may either be paid to the annuitant or invested in the purchase of an annuity (*e*). Again, where the estate is insufficient to pay in full the legacies and also the value of the annuity as at the testator's death, the amount of the valuation should be treated as a legacy, and, all the legacies abating proportionately, the abated amount of the valuation should be paid to the annuitant (*f*).

(3) A simple bequest of an annuity, followed by a power to the trustees to purchase an annuity. (3) Power to purchase.

In this case, when the trustees have finally determined to exercise the power and have provided money for the purpose of the purchase, the annuitant can claim to have the value of the annuity paid over to him (*g*). If, however, the annuitant dies before the money has been provided, his representatives have not this right (*h*).

(4) A simple bequest of an annuity, followed by a direction to trustees to purchase an annuity (*i*) or a direction to purchase standing alone (*k*). (4) Direction to purchase.

In these cases the annuitant has a right to claim in cash the price to be paid for the annuity; and, if he dies before the purchase, his representatives have a similar right, even where his death occurs immediately after that of the testator (*l*).

(5) A direction to trustees to invest a given sum in the purchase of an annuity for the annuitant's benefit (*a*). (5) Direction to invest a given sum.

In this case the annuitant is entitled to the sum; and, if he dies before appropriation, his representatives have a similar right (*b*).

938. The right to have the cash value of a life annuity paid over to him is not interfered with by a power to trustees to apply the annuity for the annuitant's personal benefit (*c*), or by a mere declaration that the annuitant shall not be entitled to receive the When right of annuitant to payment of value is negatived.

(*e*) *Re Cottrell, Buckland* v. *Bedingfield*, [1910] 1 Ch. 402.

(*f*) *Ibid.*, at p. 407. Legacies and annuities abate rateably (*Miller* v. *Huddlestone* (1851), 3 Mac. & G. 513); *Hume* v. *Edwards* (1749), 3 Atk. 693; *Rogers* v. *Millicent* (1780), 2 Dick. 570; and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 276.

(*g*) *Re Mabbett, Pitman* v. *Holborrow*, [1891] 1 Ch. 707; see *Messeena* v. *Carr* (1870), L. R. 9 Eq. 260.

(*h*) *Re Mabbett, Pitman* v. *Holborrow, supra.*

(*i*) *Stokes* v. *Cheek* (1860), 28 Beav. 620; *Re Brunning, Gammon* v. *Dale*, [1909] 1 Ch. 276.

(*k*) *Yates* v. *Compton* (1725), 2 P. Wms. 308; *Dawson* v. *Hearn* (1831), 1 Russ. & M. 606; *Ford* v. *Batley* (1853), 17 Beav. 303; *Re Robbins, Robbins* v. *Legge*, [1907] 2 Ch. 8, C. A.

(*l*) *Re Robbins, Robbins* v. *Legge, supra*; *Re Brunning, Gammon* v. *Dale, supra.* For forms of bequest of an annuity, see Encyclopædia of Forms and Precedents, Vol. XV., pp. 427, 462, 480, 481, 594 *et seq.*

(*a*) *Barnes* v. *Rowley* (1797), 3 Ves. 305; *Bayley* v. *Bishop* (1803), 9 Ves, 6; *Palmer* v. *Craufurd* (1819), 3 Swan. 482.

(*b*) See the cases cited in note (*l*), *supra.*

(*c*) *Re Browne's Will* (1859), 27 Beav. 324; so also in the case of a restraint on anticipation (*Woodmeston* v. *Walker* (1831), 2 Russ. & M. 197); and see title HUSBAND AND WIFE, Vol. XVI., p. 364.

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value of the annuity (*d*). In order to prevent the annuitant having the value there must be a gift over (*e*).

Perpetual annuity amounting to gift of *corpus*.

939. The creation by will of a perpetual annuity may take the form of an unlimited gift of the income of a particular fund and, in such case, amounts to a gift of the *corpus* from which the income arises, and the annuitant is entitled to payment of the *corpus* accordingly (*f*).

SUB-SECT. 3.—*Creation by or under the Powers of a Statute.*

Annuities payable out of public revenues.

940. As regards the raising of money, a long series of statutes (*g*) empowered the Government to raise money by the creation of annuities payable out of the public revenues. The management of these funds was eventually given to the National Debt Commissioners (*h*); and many statutes have since provided for the creation of either terminable or perpetual annuities (*i*), or the conversion of perpetual annuities into terminable annuities (*j*), or the conversion of Exchequer bonds into annuities (*k*).

Annuities for raising money for special public purposes.

Money has frequently been raised for special purposes by the creation of annuities, for example, by the Fortification Acts (*l*), the Telegraphs Acts (*m*) and the Public Buildings Expenses Act, 1903 (*n*), and to pay off shareholders in a public company whose dividends were guaranteed by the Government (*o*), or to pay the amount due from the National Debt Commissioners on account of friendly societies (*p*), or in respect of trustee savings banks (*q*), or in connexion with the purchase of Irish land (*r*). The Court of Probate

(*d*) *Hatton* v. *May* (1876), 3 Ch. D. 148; *Hunt-Foulston* v. *Furber* (1876), 3 Ch. D. 285; *Re Mabbett, Pitman* v. *Holborrow*, [1891] 1 Ch. 707, 713.

(*e*) *Roper* v. *Roper* (1876), 3 Ch. D. 714, 721.

(*f*) *Blight* v. *Hartnoll* (1881), 19 Ch. D. 294, 296; *Re Morgan, Morgan* v. *Morgan*, [1893] 3 Ch. 222, 229, C. A.; *Bent* v. *Cullen* (1871), 6 Ch. App. 235, 238; see *Evans* v. *Walker* (1876), 3 Ch. D. 211.

(*g*) (1744) 18 Geo. 2, c. 9; (1745) 19 Geo. 2, c. 12; (1756) 30 Geo. 2, c. 19; (1765) 5 Geo. 3, c. 23; (1778) 18 Geo. 3, c. 22; (1779) 19 Geo. 3, c. 18; (1789) 29 Geo. 3, c. 41; (1790) 30 Geo. 3, c. 45; (1829) 10 Geo. 4, c. 24. For many of the matters referred to in the text, *infra*, see title REVENUE, pp. 531 *et seq.*, *post*.

(*h*) Government Annuities Act, 1832 (2 & 3 Will. 4, c. 59), s. 2.

(*i*) See, *e.g.*, Military Forces Localization Act, 1872 (35 & 36 Vict. c. 68); Revenue Act, 1898 (61 & 62 Vict. c. 46); Finance Act, 1899 (62 & 63 Vict. c. 9); Finance Act, 1900 (63 & 64 Vict. c. 7); Finance Act, 1901 (1 Edw. 7, c. 7).

(*j*) National Debt Act, 1883 (46 & 47 Vict. c. 54), s. 2 (1).

(*k*) National Debt Act, 1881 (44 & 45 Vict. c. 55), s. 2 (1).

(*l*) (1860) 23 & 24 Vict. c. 109; (1862) 25 & 26 Vict. c. 78; (1863) 26 & 27 Vict. c. 80; (1864) 27 & 28 Vict. c. 109; (1865) 28 & 29 Vict. c. 61; (1867) 30 & 31 Vict. c. 24; (1867) 30 & 31 Vict. c. 145; (1869) 32 & 33 Vict. c. 76.

(*m*) (1869) 32 & 33 Vict. c. 73; (1871) 34 & 35 Vict. c. 75; (1873) 36 & 37 Vict. c. 83; (1876) 39 & 40 Vict. c. 5.

(*n*) 3 Edw. 7, c. 41.

(*o*) Stat. (1862) 25 & 26 Vict. c. 39.

(*p*) Revenue, Friendly Societies, and National Debt Act, 1882 (45 & 46 Vict. c. 72), s. 21.

(*q*) Savings Banks Act, 1880 (43 & 44 Vict. c. 36).

(*r*) Irish Land Act, 1903 (3 Edw. 7, c. 37). In 1888 the rate of interest on the National Debt was reduced and the National Debt converted by

Act, 1857 (*s*), provided for the grant of Government annuities by way of compensation to proctors (*a*).

Annuities for raising money by local Acts.

941. In addition to the public general statutes, powers have been given by various local Acts to raise money by the creation of annuities. This power is given, as a general rule, for a specific purpose, as, for example, to meet the expenses of paving and lighting (*b*), or of managing a river (*c*), or repairing or rebuilding a church (*d*).

Annuities under Savings Banks Acts.

942. As regards the purchase of annuities by the public, the Savings Banks Acts (*e*) have created and gradually extended the powers of the Government to grant Government annuities of small amount. By the Government Annuities Acts, 1853 and 1864 (*f*), annuities up to the amount of £50 might be granted to persons of not less than sixteen years of age nor more than sixty, and the payments for these were to be made either in one gross sum or by annual payments during a course of years. By the Government Annuities Act, 1882 (*g*), and the Savings Bank Act, 1887 (*g*), the amount was increased to £100, and the minimum age reduced to five years. Annuities may also be granted to two persons as joint tenants, provided the whole amount does not exceed the amount grantable to one person (*h*).

Part III.—Rights of Rentchargers and Annuitants as Affected by Various Forms of Limitation.

SECT. 1.—*Commencement and Duration of Rentcharges and Annuities.*

SUB-SECT. 1.—*Rentcharges.*

Duration.

943. The duration of a rentcharge depends upon (1) the words of limitation used, and (2) the nature of the estate out of which it is limited.

the National Debt (Conversion) Act, 1888 (51 Vict. c. 2); see National Debt Redemption Act, 1889 (52 Vict. c. 4); and see, further, title REVENUE, pp. 753 *et seq.*, *post.*

(*s*) 20 & 21 Vict. c. 77.

(*a*) *Ibid.*, s. 105. Such an annuity is assignable (*Blake* v. *Halse* (1892), 8 T. L. R. 789); compare titles CHOSES IN ACTION, Vol. IV., pp. 400—402; RECEIVERS, pp. 368—370, *ante.*

(*b*) *Cane* v. *Chapman* (1836), 1 Nev. & P. (K. B.) 104.

(*c*) *Marchant* v. *Lee Conservancy Board* (1874), 43 L. J. (EX.) 44, Ex. Ch.

(*d*) *Delarue* v. *Church* (1851), 20 L. J. (CH.) 183.

(*e*) See notes (*f*), (*g*), *infra;* and see title BANKERS AND BANKING, Vol. I. pp. 579, 580.

(*f*) 16 & 17 Vict. c. 45; 27 & 28 Vict. c. 43.

(*g*) 45 & 46 Vict. c. 51; 50 & 51 Vict. c. 40.

(*h*) Government Annuities Act, 1882 (45 & 46 Vict. c. 51), s. 8. A Government annuity granted for the life of a judgment debtor is not chargeable under the Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 14

SECT. 1.
Commencement and Duration of Rentcharges and Annuities.

As regards words of limitation, the rules of construction applicable to limitations of estates in land are also applicable to limitations of estates in rentcharges (*i*). The estate depends in each case on the words of limitation used, and the duration of the rentcharge is ascertained accordingly (*k*). The various estates for which a rentcharge may be created have already been stated (*l*).

Effect of words of limitation.

As regards estates in fee, a rentcharge created *de novo* for such an estate may, it seems, be limited to commence at a future time, and such future time may either be a fixed point or may be ascertainable on a contingency (*m*). As regards estates tail, a rentcharge, being a "tenement" within the Statute De Donis (*n*), may either be created *de novo* for an estate tail only, or, while existing for an estate in fee, may be subsequently entailed. In the former case a disentailing assurance would, it seems, create a base fee; in the latter case it would result in a fee simple (*o*). As regards estates *pur. autre vie*, where the grantee of the rentcharge predeceases the *cestui que vie*, the estate may pass to the legal personal representative of the grantee either as special occupant (*p*) or under the Wills Act, 1837 (*q*).

Effect of nature of estate out of which rentcharge granted.

944. Where A, owning Blackacre in fee, grants thereout a rentcharge to B without words of limitation, B takes an estate in the rentcharge for life only (*r*). The result is the same where A devises

(*Taylor* v. *Turnbull* (1859), 4 H. & N. 495); and see title EXECUTION, Vol. XIV., pp. 101 *et seq.*

(*i*) *Drew* v. *Barry* (1874), 8 I. R. Eq. 260, 284, C. A. As to words of limitation in regard to land, see, for examples, title REAL PROPERTY AND CHATTELS REAL, pp. 165, 168—173, 174, 178, 200, 207, 210, 243—246.

(*k*) Thus, if A, owning Blackacre in fee, grant thereout a rent to B "in fee simple," B takes a perpetual rentcharge (Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 51). A perpetual rentcharge may also pass under a grant to A without words of inheritance, where the intention sufficiently appears by the deed (*Re Stinson's Estate*, [1910] 1 I. R. 47; see *Re Oliver's Settlement*, *Evered* v. *Leigh*, [1905] 1 Ch. 191). Where a tenant for life under the Settled Land Acts (see title SETTLEMENTS) grants land for building purposes subject to a reservation of a perpetual rentcharge, the reservation operates to create a rentcharge in fee (Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 9); and see p. 478, *ante*.

(*l*) See p. 472, *ante*.

(*m*) Plowd. 156; see Challis, Law of Real Property, 3rd ed., p. 112. For form of grant of a rentcharge in fee, see Encyclopædia of Forms and Precedents, Vol. I., pp. 545, 547, 549.

(*n*) Stat. (1285) 13 Edw. 1, c. 1; Co. Litt. 19 b; see *A.-G.* v. *Richmond* (*Duke*) (No. 2), [1907] 2 K. B. 940, 973; and see title REAL PROPERTY AND CHATTELS REAL, pp. 172, 241, 242, *ante*. In this respect a rentcharge differs from an annuity; see *Bignold* v. *Giles* (1859), 4 Drew. 343, 346.

(*o*) Co. Litt. 298 a, note (2); see Challis, Law of Real Property, 3rd ed., p. 328; and see title REAL PROPERTY AND CHATTELS REAL, pp. 255, 262, *ante*.

(*p*) *Northen* v. *Carnegie* (1859), 4 Drew. 587; see *Bearpark* v. *Hutchinson* (1830), 7 Bing. 178.

(*q*) 7 Will. 4 & 1 Vict. c. 26, s. 6; see *Re Sheppard*, *Sheppard* v. *Manning*, [1897] 2 Ch. 67; see also the earlier opinion expressed by Lord HARDWICKE in *Savery* v. *Dyer* (1752), Amb. 139; and see title REAL PROPERTY AND CHATTELS REAL, pp. 178, 181, 182, *ante*.

(*r*) *Re Gillman's Estate* (1875), 10 I. R. Eq. 92, 94.

Blackacre to B in fee, creating thereout *de novo* a rentcharge in favour of C without words of limitation. If, however, A, owning a rentcharge in fee, gives by will that rentcharge to C without words of limitation, C takes in fee (*s*). Where A, owning Blackacre in fee and Whiteacre for a term of years, grants out of Blackacre and Whiteacre a rentcharge to B in fee, the rentcharge in fee issues out of Blackacre only, but nevertheless with a right to distrain upon Whiteacre during the term (*t*). Where A, owning Blackacre for a term of years, grants thereout a rentcharge to B for his life, this is a chattel interest which will endure until the term expires or B dies, whichever event first happens (*u*). Where A, owning Blackacre for a term of years determinable on lives, devises out of this estate a rentcharge to B, the rentcharge will continue during the term notwithstanding the death of B (*v*).

Effect of power to jointure.

945. A power given by a will to a tenant for life to appoint a rentcharge to his wife by way of jointure may, in special cases, authorise the appointment of a rentcharge commencing in the lifetime of the husband (*w*); but *primâ facie* such a power refers to a jointure commencing on the husband's death (*x*).

SUB-SECT. 2.—*Annuities.*

General rules as to commencement.

946. An annuity created by deed commences, unless otherwise expressed, from the execution of the deed (*a*). An annuity arising under a will commences *primâ facie* from the death of the testator (*b*); but the will may direct a later commencement (*c*).

(*s*) *Nichols* v. *Hawkes* (1853), 10 Hare, 342. The difference arises from the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 28, which applies in the latter case, but not in the former; see title WILLS.

(*t*) *Butt's Case* (1600), 7 Co. Rep. 23 a; *Richardson* v. *Nixon* (1845), 2 Jo. & Lat. 250.

(*u*) *St. Auby's Case* (1590), Cro. Eliz. 183; *Butt's Case, supra*; *Saffery* v. *Elgood* (1834), 1 Ad. & El. 191; and see pp. 467, 474, *ante*.

(*v*) *Gifford* v. *Goldsey* (1688), 2 Vern. 35; *Re Finlay's Estate*, [1907] 1 I. R. 24; *Courtenay* v. *Gallagher* (1856), 5 I. Ch. R. 154, 356.

(*w*) *Jamieson* v. *Trevelyan* (1854), 10 Exch. 269. For form of grant of a jointure rentcharge, see Encyclopædia of Forms and Precedents, Vol. I., p. 554.

(*x*) *Re De Hoghton, De Hoghton* v. *De Hoghton*, [1896] 2 Ch. 385; and see title POWERS, Vol. XXIII. p. 80.

(*a*) *Weston* v. *Bowes* (1742), 9 Mod. Rep. 309. For forms relating to the creation of annuities, see Encyclopædia of Forms and Precedents, Vol. I., pp. 503 *et seq.*

(*b*) *Re Robbins, Robbins* v. *Legge*, [1906] 2 Ch. 648, 653; *Gibson* v. *Bott* (1802), 7 Ves. 89, 96; *Stamper* v. *Pickering* (1838), 9 Sim. 176; see *Re Brunning, Gammon* v. *Dale*, [1909] 1 Ch. 276; *Pettinger* v. *Ambler* (1865), 34 Beav. 542. Thus, where an annuity is directed to be paid by monthly payments, the first payment should be made at the end of the first month after the testator's death (*Houghton* v. *Franklin* (1823), 1 Sim. & St. 390); *Byrne* v. *Healy* (1828), 2 Mol. 94; *Irvin* v. *Ironmonger* (1831), 2 Russ. & M. 531).

(*c*) *Storer* v. *Prestage* (1818), 3 Madd. 167; *Rawson* v. *M'Causland* (1873), 22 W. R. 145; *Ingham* v. *Daly* (1882), 9 L. R. Ir. 484; *Turner* v. *Probyn* (1792), 1 Anst. 66; *Hartland (Lord)* v. *Lyster* (1833), Hayes & Jo. 305; see the inconsistent clause in *Re Bywater, Bywater* v. *Clarke* (1881), 18 Ch. D. 17, C. A.

SECT. 1. Commencement and Duration of Rentcharges and Annuities.

947. As regards its duration, an annuity may be (1) for the life of the annuitant, or (2) perpetual, or (3) for some period other than the life of the annuitant (*d*).

Duration.

948. With regard to annuities for the life of the annuitant; an annuity given by will to a person *simpliciter*, without words of limitation, is for life only (*e*). This is the general rule, so that if a longer duration is claimed, the claimant must establish an exception (*f*). Even where an annuity is given by will to one person for life and then to another simply, both persons take life annuities only (*g*).

Annuity for life of annuitant.

Perpetual annuity.

949. With regard to perpetual annuities; an annuity bequeathed to a person is perpetual where the words indicate its perpetual continuance after his death (*h*), as, for instance, where the annuity is given to him for ever (*i*), or where there is a gift over if he dies without issue (*k*), or where, in the case of an annuity given to several without survivorship, there is a direction for the sale at a particular period of the annuity in its integrity (*l*).

From the nature of the limitation.

An annuity is perpetual where given to "A and his heirs" (*m*) or to "A. or his heirs" (*n*). Where an annuity is given to "A and the heirs of his body," A takes a conditional fee which becomes absolute on the birth of issue (*o*).

A direction to purchase an annuity in Government securities to the amount of so much a year may pass a perpetual annuity (*p*).

(*d*) *Blewitt* v. *Roberts* (1841), Cr. & Ph. 274, 280.

(*e*) *Savery* v. *Dyer* (1752), Amb. 139; *Yates* v. *Maddan* (1851), 3 Mac. & G. 532; *Blight* v. *Hartnoll* (1881), 19 Ch. D. 294, 296; *Re Taber, Arnold* v. *Hayes* (1882), 51 L. J. (CH.) 721; *Re Forster's Estate* (1889), 23 L. R. Ir. 269 (where there was a provision for commutation). A promise by a father on his daughter's marriage to allow her an annuity enures for their joint lives only (*Re Curtis, Ex parte Annandale* (1834), 4 Deac. & Ch. 511).

(*f*) *Yates* v. *Maddan, supra*, at p. 543; *Hill* v. *Rattey* (1862), 2 John. & H. 634, 639.

(*g*) *Blight* v. *Hartnoll, supra*, at p. 294; *Blewitt* v. *Roberts, supra; Lett* v. *Randall* (1860), 2 De G. F. & J. 388.

(*h*) *Mansergh* v. *Campbell* (1858), 3 De G. & J. 232; *Pawson* v. *Pawson* (1854), 19 Beav. 146; see *Haggar* v. *Neatby* (1854), Kay, 379; *Hill* v. *Potts* (1862), 8 Jur. (N. S.) 555.

(*i*) *Taylor* v. *Martindale* (1841), 12 Sim. 158; *Joynt* v. *Richards* (1882), 11 L. R. Ir. 278; *Ashton* v. *Adamson* (1841), 1 Dr. & War. 198.

(*k*) *Hedges* v. *Harpur, Hedges* v. *Blick* (1858), 3 De G. & J. 129, C. A.; *Robinson* v. *Hunt* (1841), 4 Beav. 450; *Warren* v. *Wright* (1861), 12 I. Ch. R. 401; *Fielding* v. *Preston* (1857), 5 W. R. 851; *Barden* v. *Meagher* (1867), 1 I. R. Eq. 246; see *Ward* v. *Ward*, [1903] 1 I. R. 211.

(*l*) *Mansergh* v. *Campbell, supra*, at p. 241.

(*m*) *Aubin* v. *Daly* (1820), 4 B. & Ald. 59; *Radburn* v. *Jervis* (1841), 3 Beav. 450; compare *Ferard* v. *Griffin* (1838), 2 Keen, 615.

(*n*) *Parsons* v. *Parsons* (1869), L. R. 8 Eq. 260; compare the gift of an annuity to "A or his descendants," which was held to be a gift to A for life only with a substitutional gift to his descendants for life (*Re Morgan, Morgan* v. *Morgan*, [1893] 3 Ch. 222, C. A.).

(*o*) *Re Rivett-Carnac's (Sir J.) Will* (1885), 30 Ch. D. 136, 141; see *Re Wynch's Trusts, Ex parte Wynch* (1854), 5 De G. M. & G. 138, C. A.; and see title REAL PROPERTY AND CHATTELS REAL, pp. 168, 172, *ante*.

(*p*) *Ross* v. *Borer* (1862), 2 John. & H. 469; *Kerr* v. *Middlesex Hospital* (1852), 2 De G. M. & G. 576, C. A.; see, however, *Re Grove's Trusts*

Again, an annuity is perpetual where the words amount to a gift of the income of a particular fund without limit of time (*q*).

An unlimited gift of an annual sum "being the interest of" stock carries the principal (*r*); but a mere charge of an annuity on a particular fund does not render it perpetual (*s*); nor does a charge on land devised in fee simple (*t*). A charge on leasehold property may cause an annuity to continue during the lease (*a*).

From the nature of the property.

950. With regard to annuities created for some definite period other than the life of the annuitant, where there is a gift by will of an annuity to a person for some period other than his own life, or for some particular purpose which may last only during some such definite period, the general rule is that the gift is for that period and for that period only.

Annuities for definite period other than life of annuitant.

Thus, a gift of an annuity for a term or *pur autre vie* is a gift to the annuitant and his representatives during the term or during the life of the *cestui que vie* (*b*). An annuity given to A during the life of B continues during the life of B, although A predeceases him (*c*); and an annuity given to the testator's son from his majority to the death or second marriage of the testator's widow continues during that period, notwithstanding that the son dies before the widow, being payable after the son's death to his representatives (*d*).

Annuity for a term or *pur autre vie*.

A single annuity given to A and B "during their lives" continues during the life of A surviving, who after B's death takes the whole (*e*). But under a direction to purchase an annuity "for the life of A and B" to be equally divided between them, the annuity continues during the joint lives only (*f*). In such a case, however, a gift over "after the deaths of A and B" may cause the annuity to continue for the survivor's benefit during his life (*g*). A single annuity, given to A and B expressly "during their lives and the life

Annuity limited to two persons.

(1859), 1 Giff. 74; *Re Taber, Arnold* v. *Kayess* (1882), 51 L. J. (CH.) 721, 723.

(*q*) *Blewitt* v. *Roberts* (1841), Cr. & Ph. 274, 280; *Blight* v. *Hartnoll* (1881), 19 Ch. D. 294, 296; see *Stokes* v. *Heron* (1845), 12 Cl. & Fin. 161, H. L.; *Potter* v. *Baker* (1852), 15 Beav. 489; *Hicks* v. *Ross* (1872), L. R. 14 Eq. 141; *Haggar* v. *Neatby* (1854), Kay, 379; *Bent* v. *Cullen* (1871), 6 Ch. App. 235, 238.

(*r*) *Stretch* v. *Watkins* (1816), 1 Madd. 253; *Rawlings* v. *Jennings* (1806), 13 Ves. 39; *Engelhardt* v. *Engelhardt* (1878), 26 W. R. 853.

(*s*) *Re Morgan, Morgan* v. *Morgan*, [1893] 3 Ch. 222, 228, C. A.; *Blight* v. *Hartnoll, supra*, at p. 297; see *Wilson* v. *Maddison* (1843), 2 Y. & C. Ch. Cas. 372.

(*t*) *Mansergh* v. *Campbell* (1858), 3 De G. & J. 232, 237.

(*a*) *Courtnay* v. *Gallagher* (1856), 5 I. Ch. R. 154, 356; *Re Finlay's Estate*, [1907] 1 I. R. 24; and see p. 485, *ante*.

(*b*) *Re Ord, Dickinson* v. *Dickinson* (1879), 12 Ch. D. 22, 25, C. A.

(*c*) *Savery* v. *Dyer* (1752), Amb. 139.

(*d*) *Re Ord, Dickinson* v. *Dickinson, supra*, at p. 25; see *Re Drayton, Francis* v. *Drayton* (1912), 56 Sol. Jo. 253; compare *Sutcliffe* v. *Richardson* (1872), L. R. 13 Eq. 606.

(*e*) *Alder* v. *Lawless* (1863), 32 Beav. 72; *Moffatt* v. *Burnie* (1853), 18 Beav. 211.

(*f*) *Grant* v. *Winbolt* (1854), 23 L. J. (CH.) 282.

(*g*) *Re Telfair, Garrioch* v. *Barclay* (1902), 86 L. T. 496; see *M'Dermott* v. *Wallace* (1842), 5 Beav. 142.

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of the survivor" in equal shares, continues during that period but without survivorship, the share of A predeceasing B going to his representative (*h*); but in a case of this kind, where the gift is to A and B during their and his life with a gift over after the death of the survivor, A surviving is entitled to receive the whole annuity (*i*).

Several annuities to two persons.

Under a gift of several annuities to A and B "for their lives and the life of the survivor" each takes an annuity continuing during their joint lives and the life of the survivor (*j*); but if such a bequest contains the additional words "for their or her absolute use and benefit" the annuity of A on his predeceasing B survives to B for his life (*k*). Under a gift to A and B of an annual sum each so long as they shall live, A and B take several annuities each continuing for the life of the annuitant (*l*). A bequest of an annuity to several persons during their lives, without words of survivorship, is a bequest to each of them of a separate annuity equal to an aliquot share of the whole, and, upon the death of each, his separate annuity ceases (*m*).

Annuities during lives of animals.

951. As regards annuities bequeathed during the lives of animals, the bequest of an annuity to an executor to be paid for the keep of the testator's mare is a valid gift of an annuity during the mare's life (*n*). Again, if a testator charges land with payment to his trustees of an annuity for the term of fifty years if any of his horses and hounds shall so long live, the annuity to be applied in their maintenance, the gift is valid (*o*). It seems that the duration of such an annuity should for the purposes of the rule against perpetuities be confined to human lives (*p*).

Annuity to a trustee or executor *virtute officii*.

952. An annuity bequeathed to a trustee or executor "for his trouble" (*q*), or "so long as he executes the office" (*r*), continues so long as duties or trusts remain to be performed, and are performed, by the annuitant (*r*). It does not cease upon judgment in an administration action (*s*). But where annuities are bequeathed to trustees "for their services and collecting of rents," and the

(*h*) *Bryan* v. *Twigg* (1867), 3 Ch. App. 183; *Jones* v. *Randall* (1819), 1 Jac. & W. 100.

(*i*) *Cranswick* v. *Pearson*, *Pearson* v. *Cranswick* (1862), 31 Beav. 624.

(*j*) *Eales* v. *Cardigan* (*Earl*) (1838), 9 Sim. 384; compare the construction adopted in *Re Ross*, *Ashton* v. *Ross*, [1900] 1 Ch. 162.

(*k*) *Hatton* v. *Finch* (1841), 4 Beav. 186.

(*l*) *Lill* v. *Lill* (1857), 23 Beav. 446.

(*m*) *Re Evans*, *Thomas* v. *Thomas* (1908), 77 L. J. (CH.) 583.

(*n*) *Pettingall* v. *Pettingall* (1842), 11 L. J. (CH.) 176.

(*o*) *Re Dean*, *Cooper-Dean* v. *Stevens* (1889), 41 Ch. D. 552; see *Re Howard* (1911), *Times*, 30th October.

(*p*) See Jarman on Wills, 6th ed., pp. 297, 901. As to the effect of the rule against perpetuities on such gifts, see title PERPETUITIES, Vol. XXII., pp. 297, note (*r*), 308, note (*s*).

(*q*) *Baker* v. *Martin* (1836), 8 Sim. 25; *Henrion* v. *Bonham* (1844), Drury *temp.* Sug. 476; *McDermott* v. *O'Connor* (1876), 10 I. R. Eq. 352, 357; *Clay* v. *Coles*, [1880] W. N. 145.

(*r*) *Hull* v. *Christian* (1874), L. R. 17 Eq. 546.

(*s*) *McDermott* v. *O'Connor*, *supra*, at p. 356; *Baker* v. *Martin*, *supra*.

trustees employ a collector whose expenses, to an amount exceeding the annuities, are allowed to the trustees in an administration action, the trustees are not entitled to the annuities (*a*).

953. As regards annuities given for maintenance, education and the like, the authorities are numerous. A gift of an annuity to the testator's widow during a daughter's minority, for the daughter's "maintenance and education," does not cease by the death of the widow during the minority (*b*). A gift of an annuity for the maintenance of A is, certainly where A is an adult (*c*), a general trust for his benefit, which amounts to an absolute gift (*d*). Such a gift during the life of another person accordingly may continue after A's death (*e*): it is certainly not confined to A's minority (*f*). A gift for the "maintenance and education" of children, where no definite period is mentioned, amounts to a gift for the joint lives of the children and the survivor of them, the children for the time being entitled taking as joint tenants until they sever (*g*). Again, a gift of an annuity during a definite period to a widow, "for her own benefit and for the maintenance and education" of a class of children, may create a trust not limited to children under twenty-one or unmarried (*h*). Under such a trust, the widow is entitled to a separate interest (*i*), which may be attached by a judgment creditor (*k*); and where in such a case she is guilty of immorality the court will administer the fund (*l*).

Annuities for maintenance and education.

954. An annuity may be validly given to A during her widowhood (*m*). A gift of an annuity to A "so long as she continues my widow" ceases on A's death or remarriage (*n*). The remarriage must, of course, be a valid ceremony (*o*). Such an interest will continue notwithstanding a ceremony of marriage celebrated between A

Annuities during widowhood or spinsterhood.

(*a*) *Re Muffet, Jones* v. *Mason* (1887), 56 L. J. (CH.) 600, C. A.
(*b*) *Re Yates, Yates* v. *Wyatt*, [1901] 2 Ch. 438.
(*c*) *Younghusband* v. *Gisborne* (1844), 1 Coll. 400; *Lewes* v. *Lewes* (1848), 16 Sim. 266; *Williams* v. *Papworth*, [1900] A. C. 563, 567, P. C.
(*d*) *Webb* v. *Kelly* (1839), 9 Sim. 469, 472.
(*e*) *Webb* v. *Kelly, supra*; *Lewes* v. *Lewes, supra*; *Bayne* v. *Crowther* (1855), 20 Beav. 400; *Attwood* v. *Alford* (1866), L. R. 2 Eq. 479; but see Jarman on Wills, 6th ed., p. 927.
(*f*) *Soames* v. *Martin* (1839), 10 Sim. 287; *Alexander* v. *M'Cullock* (1787), 1 Cox, Eq. Cas. 391; *Farr* v. *Hennis* (1881), 44 L. T. 202, C.A.
(*g*) *Wilkins* v. *Jodrell* (1879), 13 Ch. D. 564; *Williams* v. *Papworth*, [1900] A. C. 563, P. C.; *Soames* v. *Martin, supra*; compare *Gardner* v. *Barber* (1854), 18 Jur. 508.
(*h*) *Longmore* v. *Elcum* (1843), 2 Y. & C. Ch. Cas. 363; *Re Booth, Booth* v. *Booth*, [1894] 2 Ch. 282, and cases there cited; compare *Wilkins* v. *Jodrell, supra*, at p. 572.
(*i*) *Re G.* (*Infants*), [1899] 1 Ch. 719, 725.
(*k*) *Nash* v. *Pease* (1878), 47 L. J. (Q. B.) 766.
(*l*) *Re G.* (*Infants*), *supra*.
(*m*) *Scott* v. *Tyler* (1788), 2 Dick. 712, 721; *Morley* v. *Rennoldson, Morley* v. *Linkson* (1843), 2 Hare, 570, 580.
(*n*) *Rishton* v. *Cobb* (1839), 5 My. & Cr. 145, 152; *Re Boddington, Boddington* v. *Clairat* (1884), 25 Ch. D. 685, 691, C. A.; see *May* v. *May* (1871), 19 W. R. 432.
(*o*) *Re M'Loughlin's Estate* (1878), 1 L. R. Ir. 421; *Re Rutter, Donaldson* v. *Rutter*, [1907] 2 Ch. 592.

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and her deceased sister's husband before August, 1907 (*p*). Where in the case of such a gift, A is not the testator's wife at his death, the gift is inoperative (*q*), except where it appears that the testator meant to use the word "widow" in a secondary sense (*r*). The gift of an annuity to A, a single woman, "until she shall die or be married" is good, and will cease upon her death or marriage (*s*); and it seems that a similar limitation of a rentcharge, which is real estate, would follow the same rule (*t*). The gift of an annuity to A so long as she remains unmarried, there being no gift over, requires marriage to determine it, and, if A dies unmarried, her executor is entitled to the fund producing the annuity (*a*). If the will includes a gift over to B "after A's marriage" or "if A marries," B takes upon A. dying unmarried (*b*). It seems that where an annuity is bequeathed, after the death of a husband, to his wife "so long as she continues unmarried," a divorce may not prevent the wife from taking (*c*).

Effect of conditions subsequent in restraint of marriage.

955. While limitations of annuities and rentcharges until marriage may be good, different results may follow from conditions subsequent in restraint of marriage, whether total or partial, attached to gifts of this kind (*d*).

Effect of terms discouraging cohabitation.

Sometimes annuities are given upon terms calculated to discourage one spouse from cohabiting with the other (*e*); as, for instance, where a testator bequeaths an annuity to the annuitant to be paid only whilst living apart from his or her wife or husband (*f*),

(*p*) *Re Whitfield, Hill* v. *Mathie*, [1911] 1 Ch. 310 (where the effect of the Deceased Wife's Sister's Marriage Act, 1907 (7 Edw. 7, c. 47), was considered); and see title HUSBAND AND WIFE, Vol. XVI., p. 285.

(*q*) *Re Boddington, Boddington* v. *Clairat* (1884), 25 Ch. D. 685, 691, C. A.

(*r*) *Re Wagstaff, Wagstaff* v. *Jalland*, [1908] 1 Ch. 162, C. A.

(*s*) *Heath* v. *Lewis* (1853), 3 De G. M. & G. 954, 956; *Webb* v. *Grace* (1848), 2 Ph. 701; *Re King's Trusts* (1892), 29 L. R. Ir. 401; *Potter* v. *Richards* (1855), 1 Jur. (N. S.) 462.

(*t*) *Jones* v. *Jones* (1876), 1 Q. B. D. 279.

(*a*) *Rishton* v. *Cobb* (1839), 5 My. & Cr. 145, 152; *Re Howard, Taylor* v. *Howard*, [1901] 1 Ch. 412.

(*b*) *Re Mason, Mason* v. *Mason*, [1910] 1 Ch. 695, C. A.; see *Re Tredwell, Jeffray* v. *Tredwell*, [1891] 2 Ch. 640, 647, C. A.

(*c*) *Knox* v. *Wells* (1883), 48 L. T. 655; see *Knox* v. *Wells* (1864), 2 Hem. & M. 674. A grant of an annuity by deed to a *feme sole* until it should become vested in any other person was held, prior to the Married Women's Property Acts, not to have been forfeited by her marriage (*Bonfield* v. *Hassall* (1863), 9 Jur. (N. S.) 453).

(*d*) As to the distinction between a condition precedent and a condition subsequent, see title CONTRACT, Vol. VII., p. 432. It has been said that, according to English law, if a condition subsequent which is to defeat an estate is against the policy of the law, the gift is absolute, but if the illegal condition is precedent there is no gift (*Re Moore, Trafford* v. *Maconochie* (1888), 39 Ch. D. 116, C. A., *per* COTTON, L.J., at p. 129; see *Reynish* v. *Martin* (1746), 3 Atk. 330, *per* Lord HARDWICKE, L.C., at p. 332); *Brooke* v. *Spong* (1846), 15 M. & W. 153). For the rules as to conditions, see titles GIFTS, Vol. XV., pp. 423, 424; WILLS.

(*e*) As to the right of *consortium*, see title HUSBAND AND WIFE, Vol. XVI., pp. 318 *et seq.*

(*f*) See, *e.g.*, *Re Moore, Trafford* v. *Maconochie, supra*. As to contracts for separation and settlements made in view of separation, see title HUSBAND AND WIFE, Vol. XVI., pp. 439 *et seq.*. For form of grant

or bequeaths a periodical sum to the annuitant with a direction that the sum is to be increased when living apart (*g*). If the words referring to living apart should be read as a condition subsequent, it will be ignored as a condition *contra bonos mores* (*h*). If, however, the words should be read as a limitation rather than a condition, as where the commencement and duration of the period during which the payment is to be made is fixed by reference to the living apart, the gift is void (*i*).

Proviso for cesser in marriage settlement.

If a marriage settlement contains a grant by the wife to the husband of an annuity, a proviso for its cesser on the annuitant living apart from his wife is void (*k*).

Separation deeds.

The construction of covenants in separation deeds relating to the payment of annuities, and the effect on such provisions of subsequent reconciliation, has already been dealt with (*l*).

SECT. 2.—*Rights as to Property Charged: Capital or Income* (*m*).

Question of property charged depends on construction.

956. With regard to the property charged with annuities given by will, the question whether an annuity is payable exclusively out of income, or is charged upon the *corpus* of the estate, or whether any arrears are payable out of the income of succeeding years, depends entirely upon the words of the particular will construed in their ordinary grammatical sense (*n*). In some cases the words of the will may amount to a clear charge on *corpus* which does not admit of doubt (*a*). In other cases doubts may arise as to the

of an annuity during chastity of wife, see Encyclopædia of Forms and Precedents, Vol. II., p. 426.

(*g*) See, *e.g.*, *Brown* v. *Peck* (1758), 1 Eden, 140.

(*h*) *Re Moore, Trafford* v. *Maconochie* (1888), 39 Ch. D. 116, C. A.; *Wren* v. *Bradley* (1848), 2 De G. & Sm. 49, as explained in *Re Moore, Trafford* v. *Maconochie, supra*, by COTTON, L.J., at p. 130; see *Bedborough* v. *Bedborough* (No. 2) (1865), 34 Beav. 286.

(*i*) *Re Moore, Trafford* v. *Maconochie, supra;* see *Re Hope Johnstone, Hope Johnstone* v. *Hope Johnstone*, [1904] 1 Ch. 470 (where the period was fixed by reference to cohabitation, and the limitation was held good). Where a wife had been deserted by her husband and the will apparently provided for her maintenance until he should come back, the gift was held good (*Re Charleton, Bracey* v. *Sherwin*, [1911] W. N. 54).

(*k*) *Nicholl* v. *Jones* (1867), L. R. 3 Eq. 696.

(*l*) See title HUSBAND AND WIFE, Vol. XVI., pp. 446, 452.

(*m*) The cases in which the legatee of an annuity has, according to the form in which the annuity has been created, the right to claim the value in cash are stated at pp. 480, 481, *ante*.

(*n*) *Re Bigge, Granville* v. *Moore*, [1907] 1 Ch. 714, 716 (the decision in this case was overruled in *Re Watkins' Settlement, Wills* v. *Spence*, [1911] 1 Ch. 1, C. A.; see note (*i*), p. 493, *post*); see also *Re Boden, Boden* v. *Boden*, [1907] 1 Ch. 132, 138, C. A.; *Sheppard* v. *Sheppard* (1863), 32 Beav. 194.

(*a*) So held where annuities were charged on leaseholds (*Howarth* v. *Rothwell* (1862), 30 Beav. 516; *Lazonby* v. *Rawson* (1854), 4 De G. M. & G. 556; *Pearson* v. *Helliwell* (1874), L. R. 18 Eq. 411), or on freeholds (*Picard* v. *Mitchell* (1851), 14 Beav. 103; *Torre* v. *Brown* (1855), 5 H. L. Cas. 555; *Re Tucker, Tucker* v. *Tucker*, [1893] 2 Ch. 323; *Bell* v. *Bell* (1872), 6 I. R. Eq. 239; *Re West's Estate*, [1898] 1 I. R. 75, C. A.). On the other hand, annuities were held not to be charged on the *corpus* of real estate in *Lambert* v. *Turner* (1862), 11 W. R. 51; *Clifford* v. *Arundell* (1859), 27 Beav. 209.

SECT. 2. Rights as to Property Charged: Capital or Income.

property on which an annuity is charged, the solution of which must be found in the construction of the whole will.

The numerous cases on this subject may be conveniently grouped according to the form of the initial gift of the annuity. This gift may be in one of the following forms:—(1) in the form of a simple gift of an annuity followed usually by a residuary gift; or (2) in the form of a direction to trustees to whom the testator's general estate is given to pay an annuity out of the income of such general estate; or (3) in the form of a direction to trustees to set apart sufficient property to produce an annuity of a specified amount, and, out of the income of the property set apart, to pay such annuity; or (4) in the form of a direction to trustees to set apart specified property, whether real or personal, and, out of the income of the property set apart, to pay an annuity of a specified amount.

Cases for construction: classification of forms of gift.

(1) Gift of annuity followed by residuary gift.

957. In cases where the initial gift of the annuity is in the form of a simple gift followed by a residuary gift, the general rule is that the annuitant must be paid in preference to the residuary legatee, who can take nothing until the annuitant has been paid in full (*b*). Various forms of words have been held to amount in effect to a simple gift of an annuity followed by a residuary gift (*c*).

Effect of subsequent directions.

The right of an annuitant claiming under an initial simple gift to have recourse to the *corpus* of the residue is not taken away by a subsequent direction to trustees to pay the annuity out of income (*d*); nor, as a general rule, is such annuitant's right of recourse to the general residue taken away by a subsequent direction to trustees to set apart a fund (*e*).

Effect of setting fund apart.

As a rule of practice (independent of construction), where an annuity is payable out of residue, the court can set apart a sufficient fund to answer the annuity and pay the surplus residue to the residuary legatee; but in such a case the annuitant can, if necessary, resort to the *corpus* set apart (*f*). The appropriation

(*b*) *Re Tootal's Estate, Hankin* v. *Kilburn* (1876), 2 Ch. D. 628, 633, C. A.; *Re Webb, Leedham* v. *Patchett* (1890), 63 L. T. 545.

(*c*) See *Haynes* v. *Haynes* (1853), 3 De G. M. & G. 590, C. A.; *Croly* v. *Weld* (1853), 3 De G. M. & G. 993, C. A.; *Wroughton* v. *Colquhoun* (1846), 1 De G. & Sm. 36; *Stamper* v. *Pickering* (1838), 9 Sim. 176; *Howarth* v. *Rothwell* (1862), 30 Beav. 516 (where a note to the report contains a useful classification of cases in which annuities have been held payable out of *corpus* or out of income).

(*d*) *Re Mason, Mason* v. *Robinson* (1878), 8 Ch. D. 411; *Davies* v. *Wattier* (1823), 1 Sim. & St. 463; *Picard* v. *Mitchell* (1851), 14 Beav. 103; *Pearson* v. *Helliwell* (1874), L. R. 18 Eq. 411.

(*e*) *Re Taylor, Illsley* v. *Randall* (1884), 53 L. J. (CH.) 1161; *Upton* v. *Vanner* (1861), 1 Drew. & Sm. 594; *Carmichael* v. *Gee* (1880), 5 App. Cas. 588; *Re Mason, Mason* v. *Robinson* (1878), 8 Ch. D. 411, 413. But in a particular case the effect of the will was that, on the setting apart of the fund, the residue was released from liability (*Kendall* v. *Russell* (1830), 3 Sim. 424).

(*f*) *Harbin* v. *Masterman*, [1896] 1 Ch. 351, C. A.; and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 262. Arrears were paid out of the *corpus* of the fund set apart in *Bright* v. *Larcher* (1858), 3 De G. & J. 148, C. A.; *Miner* v. *Baldwin* (1853), 1 Sm. & G. 522; *Swallow* v. *Swallow* (1831), 1 Beav. 432, n.; *Hodge* v. *Lewin* (1839), 1 Beav. 431: prospective orders were made in the two last-mentioned cases.

of a fund to answer the annuity does not discharge the rest of the testator's estate, either where the appropriation is by the court (*g*) or where it is made by the executor (*h*).

(2) Direction to trustees, to whom general estate given, to pay annuity out of income.

958. The cases where the initial gift of the annuity is in the form of a direction to trustees, to whom the testator's general estate is given, to pay an annuity out of the income of such general estate, may be divided into two classes. In the first class the case is treated as one of "a legacy and a residuary bequest," and the annuity is charged on the *corpus* of the estate (*i*). In the second class the case is treated as one of "a tenant for life and remainderman," and the annuity is not charged on the *corpus* of the estate (*k*). In some cases where the will contains a direction to trustees, to whom the general estate is given, to pay an annuity out of the income of such general estate, the annuity is a continuing charge on the income after the death of the annuitant for the purpose of recovering arrears, though not charged on the *corpus* of the estate (*l*).

(3) Direction to set apart sufficient property and out of income to pay annuity.

959. The cases where the initial gift of the annuity is in the form of a direction to trustees to set apart sufficient property to produce an annuity of a specified amount, and out of the income of the property set apart to pay such annuity, may also be divided into two classes. In the first class the annuity is charged upon the *corpus* of the estate; the reason being that the form of gift shows the main object of the testator to be the bestowal of an annuity, the direction to set apart a fund not denoting the testator's object, but merely the means by which that object is to be secured (*m*). In the second class the annuity is not charged on

(*g*) *Re Parry, Scott* v. *Leak* (1889), 42 Ch. D. 570, 584; *Harbin* v. *Masterman*, [1896] 1 Ch. 351, 357, C. A.; *Davis* v. *Wattier* (1823), 1 Sim. & St. 463; *Re Evans and Bettell's Contract*, [1910] 2 Ch. 438; and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 262.

(*h*) *Gordon* v. *Bowden* (1822), Madd. & G. 342.

(*i*) It was so held where, after a bequest of an annuity in the above form, the testator's estate was given over "subject thereto" (*Birch* v. *Sherratt* (1867), 2 Ch. App. 644; *Re Watkins' Settlement, Wills* v. *Spence*, [1911] 1 Ch. 1, C. A.), or "subject to the annuity" (*Perkins* v. *Cooke* (1862), 2 John. & H. 393; *Re London, Brighton and South Coast Rail. Co., Ex parte Wilkinson* (1849), 3 De G. & Sm. 633; *Re Howarth, Howarth* v. *Makinson*, [1909] 2 Ch. 19, C. A.); see *Re Young, Brown* v. *Hodgson*, [1912] 2 Ch. 479; *Boyd* v. *Buckle* (1840), 10 Sim. 595, where there were no such words.

(*k*) It was so held where, after the gift of an annuity in the above form, the will contained a gift over of surplus income during the life of the annuitant (*Stelfox* v. *Sugden* (1859), John. 234; *Miller* v. *Huddlestone* (1851), 3 Mac. & G. 513; *Re Boden, Boden* v. *Boden*, [1907] 1 Ch. 132, 156, C. A. (where the gift over was expressed to be "subject to the trusts aforesaid," *i.e.*, subject to the previous gift whatever be its effect); *Re Boulcott's Settlement, Wood* v. *Boulcott* (1911), 104 L. T. 205; *Re Young, Brown* v. *Hodgson, supra*). As to the mode of adjusting liabilities in the case of settled residue, see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 282; and see p. 505, *post*.

(*l*) *Booth* v. *Coulton* (1870), 5 Ch. App. 684; see *Forbes* v. *Richardson* (1853), 11 Hare, 354; *Philipps* v. *Philipps* (1844), 8 Beav. 193; *Salvin* v. *Weston* (1866), 14 W. R. 757; *Re Taylor's Estate Act, Taylor* v. *Taylor* (1874), L. R. 17 Eq. 324; see *Wormald* v. *Muzeen* (1881), 17 Ch. D. 167, C. A.; *sed quære*, is there any difference between a charge on *corpus* and a continuing charge on income; see *Re Young, Brown* v. *Hodgson, supra*.

(*m*) *May* v. *Bennett* (1826), 1 Russ. 370, 373; *Mills* v. *Drewitt* (1855), 20 Beav. 632, 636; *Ingleman* v. *Worthington* (1855), 1 Jur. (N.S.) 1062;

SECT. 2. Rights as to Property Charged: Capital or Income.

corpus; the reason being that the form of the gift shows that the testator intended that the fund set apart should be continued in its integrity during the life of the annuitant and should in that state go over (*n*).

(4) Direction to set apart specific property and out of income to pay annuity.

960. Lastly, the cases where the initial gift of the annuity is in the form of a direction to trustees to set apart specified property, whether real or personal, and out of the income of the property set apart to pay an annuity of a specified amount, may also be divided into two classes. In the first class the annuity is charged on the *corpus* of the property set apart (*o*). In the second class the annuity is not charged on the *corpus* of the particular property set apart, but only on the income thereof; the reason being that, under the form of the gift, a new trust arises on the death of the annuitant (*p*). A similar result may be arrived at where leaseholds out of the income whereof the annuity is to be paid are directed to be sold after the death of the annuitant (*q*).

SECT. 3.—*Rights of Rentchargers and Annuitants Inter Se to Priority.*

Annuities in lieu of dower and other benefits to wife.

961. An annuity given by a testator to his widow in satisfaction of dower has priority over other annuities given by will, and in the event of a deficiency of assets does not abate (*r*), unless the testator leaves no real estate out of which she is dowable (*s*). The fact that

Wright v. *Callender* (1852), 2 De G. M. & G. 652, 655, C. A.; *Percy* v. *Percy* (1866), 35 Beav. 295; see *Carmichael* v. *Gee* (1880), 5 App. Cas. 588; *Anderson* v. *Anderson* (1863), 33 Beav. 223; *Upton* v. *Vanner* (1861), 1 Drew. & Sm. 594; *Martin* v. *Bostock* (1870), 23 L. T. 216; compare *Barnett* v. *Sheffield* (1852), 1 De G. M. & G. 371, C. A. (where the fund set apart was misapplied).

(*n*) *Baker* v. *Baker* (1858), 6 H. L. Cas. 616, 625; *Tarbottom* v. *Earle* (1863), 11 W. R. 680; *Michell* v. *Wilton* (1875), L. R. 20 Eq. 269.

(*o*) It was so held where the charge was clear (*Hickman* v. *Upsall* (1860), 2 Giff. 124), and where the property set apart was given over "subject as aforesaid" (*Hindle* v. *Taylor* (1855), 20 Beav. 109), or was given over "subject to the annuity" (*Re London, Brighton and South Coast Rail. Co., Ex parte Wilkinson* (1849), 3 De G. & Sm. 633; *Playfair* v. *Cooper, Prince* v. *Cooper* (1853), 17 Beav. 187), or was given over "after performance of the antecedent trusts" (*Phillips* v. *Gutteridge* (1862), 3 De G. J. & Sm. 332).

(*p*) *Foster* v. *Smith* (1845), 1 Ph. 629; *Earle* v. *Bellingham* (No. 1) (1857), 24 Beav. 445; *A.-G.* v. *Poulden* (1844), 3 Hare, 555; *Sheppard* v. *Sheppard* (1863), 32 Beav. 194. In the last-mentioned case the will contained a gift of the surplus income of the particular property, and the words "subject to the trusts aforesaid" were confined to payments out of income; see *Re Mackenzie's (Kenneth) Settlement* (1863), 32 Beav. 253 (a decision dealing with the case where particular property had been settled by a deed, and the income, which had been insufficient to pay annuities, subsequently increased); compare *Scott* v. *Salmond* (1833), 1 My. & K. 363 (where a particular fund was charged with annuities and given over, and the income proved insufficient to pay the annuities).

(*q*) *Darbon* v. *Rickards* (1845), 14 Sim. 537; *Addecott* v. *Addecott* (1861), 29 Beav. 460.

(*r*) *Stahlschmidt* v. *Lett* (1853), 1 Sm. & G. 421; and see titles EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 276; REAL PROPERTY AND CHATTELS REAL, p. 194, note (*g*), *ante*.

(*s*) *Acey* v. *Simpson* (1843), 5 Beav. 35; *Roper* v. *Roper* (1876), 3 Ch. D. 714; *Re Bowen, James* v. *James*, [1892] 2 Ch. 291.

a legacy is given in satisfaction of dower does not affect the question whether it is charged on *corpus* or income (*t*).

Benefits given to a wife with a direction for their early payment have no priority (*u*).

SECT. 3. Rights of Rent-chargers and Annuitants Inter se to Priority.

962. Priority between annual sums is in general a question of construction. Thus, on construction, a rentcharge charged on the testator's real estate may have priority over legacies directed to be raised out of real estate in the event of the personal estate proving insufficient (*a*). A direction to pay an annuity out of residue may postpone it to other annuities previously given by the will (*b*). Where a testator grants an annuity to A and "subject thereto" devises estates, and by subsequent codicils charges the same estates with other annuities, A's annuity has priority (*c*); but the words "in the first place" or "*imprimis*" (*d*), or a direction to pay without abatement (*e*), do not give priority.

Priority as regards property charged with annuity.

Again, a direction as to the time of payment gives no priority. For example, an annuity, deferred as to its time of payment, must in the distribution of assets rank equally with other annuities which are directed to be paid immediately (*f*); and an annuity payable immediately has no priority over an annuity payable on the death of a tenant for life (*g*), nor over annuities which are directed to be paid after the payment of certain legacies (*h*).

Effect of direction as to time of payment.

SECT. 4.—*Cumulative and Substitutional Annuities Arising by Testamentary Disposition.*

963. Where more than one annuity is given to the same person by a testamentary disposition, a doubt frequently arises whether the annuitant is entitled to both annuities or whether the second is intended to be taken in the place of the first—in other words, whether the gifts are cumulative or substitutional (*i*). The solution

Effect of gifts arising under the same or different instruments.

(*t*) *Stelfox* v. *Sugden* (1859), John. 234.

(*u*) *Re Schweder's Estate, Oppenheim* v. *Schweder*, [1891] 3 Ch. 44, dissenting from *Re Hardy, Wells* v. *Borwick* (1881), 17 Ch. D. 798; compare *Lewin* v. *Lewin* (1752), 2 Ves. Sen. 415; and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., pp. 275, 276.

(*a*) *Creed* v. *Creed* (1844), 11 Cl. & Fin. 491, 506, H. L.; *Re Briggs, Briggs* v. *George* (1881), 45 L. T. 249; *Weir* v. *Chamley* (1850), 1 I. Ch. R. 295; see *Portarlington (Earl)* v. *Damer* (1863), 4 De G. J. & Sm. 161; *Bell* v. *Bell* (1872), 6 I. R. Eq. 239; compare *Roper* v. *Roper* (1876), 3 Ch. D. 714, where legacies and annuities were charged on a testator's real estate, and a power of distress given in respect of the latter was held not to create any priority (*sed quære*).

(*b*) *Haynes* v. *Haynes* (1853), 3 De G. M. & G. 590; compare *Re Smith, Smith* v. *Smith*, [1899] 1 Ch. 365; *Re Wiltshire's Estate* (1859), 6 Jur. (N. S.) 190.

(*c*) *Graves* v. *Hicks* (1833), 6 Sim. 391.

(*d*) *Blower* v. *Morret* (1752), 2 Ves. Sen. 420, 421; *Thwaites* v. *Foreman* (1844), 1 Coll. 409.

(*e*) *Re Evans' Charities* (1858), 10 I. Ch. R. 271.

(*f*) *Nickisson* v. *Cockill* (1863), 3 De G. J. & Sm. 622; *Roche* v. *Harding* (1858), 7 I. Ch. R. 338; *Ashburnham* v. *Ashburnham* (1848), 16 Sim. 186.

(*g*) *Miller* v. *Huddlestone* (1851), 3 Mac. & G. 513; *Street* v. *Street* (1863), 2 New Rep. 56.

(*h*) *Ingham* v. *Daly* (1882), 9 L. R. Ir. 484.

(*i*) As to the question whether or not annuities and legacies bequeathed

SECT. 4. Cumulative and Substitutional Annuities Arising by Testamentary Disposition.

of this doubt depends to a large extent upon the question whether the gifts are contained in the same instrument or in different instruments; and, although a codicil is in strictness merely a part of the will, if the first gift is in the will and the second in a codicil, the result may be different from that where the gifts are both in the will, or both in the same codicil (*k*).

Annuities of same amount.

Thus, two annuities of the same amount given to the same person by the same testamentary instrument are *primâ facie* substitutional (*l*). On the other hand, two annuities of the same amount given to the same person by different testamentary instruments are *primâ facie* cumulative (*m*).

Annuities of different amounts.

Gifts to the same person in the same testamentary instrument of annuities of different amounts are *primâ facie* cumulative (*n*); but the instrument may show an intention of substitution (*o*). Gifts to the same person in separate testamentary instruments of several annuities are *primâ facie* cumulative, whether the amounts are the same or different (*p*).

Application of the doctrine of satisfaction.

964. The rules of the doctrine of satisfaction, both as regards the satisfaction of portions by legacies and the satisfaction of debts by legacies (*q*), have been discussed by the courts in connection with annuities. Thus, as regards the first of the above rules, where a father covenants by settlement to pay an annuity to his son and subsequently dies having bequeathed legacies to the son, this rule may prevent the son claiming both the annuity and the legacies (*r*). Again, where an annuity is granted or secured to another by a testator in his lifetime, and he subsequently dies having bequeathed to such grantee or obligee an annuity differing slightly from the existing annuity, these slight differences may prevent the doctrine of satisfaction from applying, so that both annuities may become

by the grantor of an annuity to the annuitant are to be taken by the annuitant in satisfaction of the annuity, see the text, *infra*.

(*k*) The question is one of intention; for similar principles applicable in the case of cumulative and substitutional legacies, compare title WILLS.

(*l*) *Holford* v. *Wood* (1798), 4 Ves. 75, 90 (where an annuity of £30 was given to A for life with specific directions as to the mode and times of payment, and in a subsequent part of the will the testator gave to A, "the butler, £30 a year for his life"); *Brine* v. *Ferrier* (1835), 7 Sim. 549 (where a will was composed of three separate sheets, and the same annuity to the same person was repeated upon two of the sheets). The instrument may show that the two annuities are intended to be successive (*Baylee* v. *Quin* (1842), 2 Dr. & War. 116).

(*m*) *Roch* v. *Callen* (1848), 6 Hare, 531; *Barclay* v. *Wainwright* (1797) 3 Ves. 462, 465; *A.-G.* v. *George* (1836), 8 Sim. 138, 146, 147; see *Tweedale* v. *Tweedale* (1840), 10 Sim. 453; *Spire* v. *Smith* (1839), 1 Beav. 419; *Radburn* v. *Jervis* (1841), 3 Beav. 450; compare *Osborne* v. *Leeds* (*Duke*) (1800), 5 Ves. 369, 382.

(*n*) *Yockney* v. *Hansard* (1844), 3 Hare, 620, 622; *Hartley* v. *Ostler* (1856), 22 Beav. 449; see *Mackinnon* v. *Peach* (1838), 2 Keen, 555.

(*o*) *Yockney* v. *Hansard*, *supra*; *Adnam* v. *Cole* (1843), 6 Beav. 353.

(*p*) *Barclay* v. *Wainwright* (1797), 3 Ves. 462, 465; *Spire* v. *Smith*, *supra*; *Radburn* v. *Jervis*, *supra*.

(*q*) The rules are stated at length in title EQUITY, Vol. XIII., pp. 128 *et seq.*

(*r*) *Montagu* v. *Sandwich* (*Earl*) (1886), 32 Ch. D. 525, C. A.; see *Graham* v. *Graham* (1749), 1 Ves. Sen. 263. As to parol evidence being admitted to rebut the presumption against double portions, see titles EQUITY, Vol. XIII., p. 136; WILLS.

payable (*s*). Where the annuities are similar there is, according to the general rule, satisfaction (*t*).

Annuities paid by a father to his daughters under a covenant in a separation deed are not on the father's death intestate treated as advancements under the Statute of Distribution (*u*).

SECT. 4. Cumulative and Substitutional Annuities Arising by Testamentary Disposition.

Part IV.—Rights of Rentchargers and Annuitants as Affected by the Quantum of the Donor's Estate or the Amount of His Assets.

SECT. 1.—*Cases where upon the Creation of a Rentcharge the Estate of the Donor in the Land Charged is Insufficient.*

Effect of insufficiency in the donor's estate.

965. If the tenant in tail of land grants out of it a rent in fee, the rent will determine on the grantor's death, unless he disentail, in which case it will continue (*v*). If a tenant for years of land grants out of it a rentcharge to a stranger for his life, the grant is not void, but is good as a chattel interest during the term if the grantee so long live (*w*). If one, who in fact is only tenant for life of land, grants an annuity to commence on his own death and charges it on the land, covenanting that the annuitant may distrain for arrears, the annuitant may recover arrears from the grantor's estate by an action of covenant (*a*). Again, where a testator, who is only entitled to an undivided share of certain land, purports by will to give a rentcharge payable out of the whole of the land, the rentcharge is payable in full out of the testator's share (*b*). If a mortgagor of copyholds covenants by the mortgage deed to surrender his land and also grants a rentcharge, the rentcharge will cease upon the mortgagee's admittance (*c*).

(*s*) *Hales* v. *Darell* (1840), 3 Beav. 324; *Re Dowse, Dowse* v. *Glass* (1881), 50 L. J. (CH.) 285; see *Barret* v. *Beckford* (1750), 1 Ves. Sen. 519; *Charlton* v. *West* (1861), 30 Beav. 124; *Paget* v. *Greenfell* (1868), L. R. 6 Eq. 7.

(*t*) *Atkinson* v. *Littlewood* (1874), L. R. 18 Eq. 595; see *Fowler* v. *Fowler* (1735), 3 P. Wms. 353.

(*u*) 22 & 23 Car. 2, c. 10, s. 5; *Hatfeild* v. *Minet* (1878), 8 Ch. D. 136, C. A.; see *Kirkcudbright* (*Lord*) v. *Kirkcudbright* (*Lady*) (1802), 8 Ves. 51; and see title DESCENT AND DISTRIBUTION, Vol. XI., pp. 19, 20.

(*v*) *Alton Woods Case* (1600), 1 Co. Rep. 40 b, 48 b.

(*w*) *Butt's Case* (1600), 7 Co. Rep. 23 a; *Saffery* v. *Elgood* (1834), 1 Ad. & El. 191, 192.

(*a*) *Monypenny* v. *Monypenny* (1861), 9 H. L. Cas. 114; compare *Teasdale* v. *Teasdale* (1726), Cas. *temp.* King, 59; *Ford* v. *Tynte* (1864), 2 De G. J. & Sm. 557, C. A. The case of a tenant for life granting a perpetual rentcharge and subsequently acquiring the remainder in fee is discussed in *Holt* v. *Sambach* (1628), Cro. Car. 103.

(*b*) *Roche* v. *Jordan*, [1896] 1 I. R. 494.

(*c*) *Freeman* v. *Edwards* (1848), 2 Exch. 732, 739.

SECT. 2.
Cases where the Donor of a Rentcharge or Annuity becomes Bankrupt.

SECT. 2.—*Cases where the Donor of a Rentcharge or Annuity becomes Bankrupt.*

Disclaimer of land charged.

966. Where the terre tenant of freehold land subject to a rentcharge becomes bankrupt, his trustee may, it seems, disclaim the land (*d*).

Proof for future payments.

Upon the bankruptcy of the donor of an annuity, future payments of the annuity may be proved as debts under the Bankruptcy Act, 1883 (*e*), even although the annuity may be contingent on the performance or non-performance of some act by the annuitant (*f*). If, after the value of a contingent annuity has been estimated, the happening of the contingency results in the assessment being excessive, the assessment cannot be altered (*g*).

Annuities provable.

967. The following annuities are capable of valuation and therefore provable in bankruptcy:—an annuity for life subject to a condition *contra bonos mores* which is void (*h*); an annuity contingent upon the annuitant surviving another person (*i*); an annuity payable under a separation deed to a wife with a proviso for cesser if she becomes unchaste or if cohabitation is resumed (*k*); an annuity to a widow to cease on remarriage (*l*); an annuity to a retiring partner determinable on breach of a covenant not to trade within a limited area (*m*); an annuity payable during the continuance of certain works which may cease at any time (*n*); an annuity payable until the annuitant does some act whereby the annuity will become vested in another (*o*).

(*d*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 55; and see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 191, 192. In the case of such a disclaimer made under the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 23, the question whether the legal estate vested in the Crown was discussed in *Re Mercer and Moore* (1880), 14 Ch. D. 287, 295. Under the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), the power of making vesting orders given by *ibid.*, s. 55 (6) (see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 194, 195), may possibly apply.

(*e*) 46 & 47 Vict. c. 52, s. 37; and see, further, title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 197 *et seq.*, 203, 204.

(*f*) *Re Blakemore, Ex parte Blakemore* (1877), 5 Ch. D. 372, C. A.; *Re Batey, Ex parte Neal* (1880), 14 Ch. D. 579, C. A.

(*g*) *Re Pannell, Ex parte Bates* (1879), 11 Ch. D. 914, C. A.; see *Victor* v. *Victor*, [1912] 1 K. B. 247, C. A. But where proof for arrears of an annuity and for the actuarial value of the annuity in the future was sent in, and the annuitant died before the trustee assented to the valuation or a dividend was declared, the proof was restricted to the amount of the instalments due and unpaid at the time of the annuitant's death (*Re Dodds, Ex parte Vaughan's Executors* (1890), 25 Q. B. D. 529).

(*h*) *Re Wood, Ex parte Naden* (1874), 9 Ch. App. 670.

(*i*) *Re Batey, Ex parte Neal* (1880), 14 Ch. D. 579, C. A.

(*k*) *Re Batey, Ex parte Neal, supra; Victor* v. *Victor, supra.*

(*l*) *Re Blakemore, Ex parte Blakemore, supra.*

(*m*) *Re Jackson, Ex parte Jackson* (1872), 27 L. T. 696, C. A.

(*n*) *Re Borron, Ex parte Parratt* (1836), 1 Deac. 696.

(*o*) *Re Sinclair, Allen* v. *Sinclair, Hodgkins* v. *Sinclair*, [1897] 1 Ch. 921 (an administration action by creditors). In *Lyde* v. *Mynn* (1833), 1 My. & K. 683, a covenant to secure an annuity upon property falling to the covenantor in a contingency which did not occur until after the covenantor's discharge in a subsequent bankruptcy was held not to have been barred by

SECT. 2. Cases where the Donor of a Rent-charge or Annuity becomes Bankrupt.

An annuity not registered pursuant to the Judgments Act, 1855 (*p*), although void as against subsequent purchasers without notice of the annuity, is binding upon all subsequent incumbrancers who took with notice and against the trustee in bankruptcy of the grantor of the annuity, and is provable in the latter's bankruptcy (*q*).

Unregistered annuity.

Future payments of alimony under a decree of judicial separation are incapable of valuation and are not provable in bankruptcy (*r*). The husband therefore continues liable to make the payments notwithstanding his discharge in bankruptcy (*s*).

Future payments of alimony.

SECT. 3.—*Cases where upon the Donor's Death his Assets are Insufficient.*

SUB-SECT. 1.—*Effect as regards Annuities Created by Instrument Inter Vivos so as to give rise to a Debt.*

968. In the administration by the court of the assets of any person who has died since the 1st November, 1875, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, the rules in bankruptcy as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively apply (*t*).

Application of rules in bankruptcy.

969. So long as the annuity is paid, the annuitant is not a creditor even where it is shown that the estate of the deceased is insufficient to meet liabilities, including the estimated value of the annuity (*a*). Consequently, the annuitant whose annuity is not in arrear cannot obtain an administration judgment (*b*); and this is the case although his annuity is expressed to accrue from day to day (*c*); but if a judgment has been obtained by another person as a creditor he is allowed to prove (*d*).

Annuitant's rights as creditor.

970. A personal representative under his right of retainer may retain the amount of all arrears owing to him in respect of his own

Extent of right of retainer.

the discharge. The decision was under stat. (1825) 6 Geo. 4, c. 16, which differs in its language from the Bankruptcy Acts, 1869 (32 & 33 Vict. c. 71) and 1883 (46 & 47 Vict. c. 52). It should be compared with *Collyer* v. *Isaacs* (1881), 19 Ch. D. 342, C. A., a decision of the Court of Appeal under the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71).

(*p*) 18 & 19 Vict. c. 15, s. 12.; see p. 480, *ante*.

(*q*) *Greaves* v. *Tofield* (1880), 14 Ch. D. 563, C. A.

(*r*) *Linton* v. *Linton* (1885), 15 Q. B. D. 239, C. A.; and see, further, title HUSBAND AND WIFE, Vol. XVI., pp. 521, 568.

(*s*) *Ibid.*; see *Watkins* v. *Watkins*, [1896] P. 222, 226, C. A.; *Victor* v. *Victor*, [1912] 1 K. B. 247, C. A.

(*t*) Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10; see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 344.

(*a*) *Re Hargreaves, Dicks* v. *Hare* (1890), 44 Ch. D. 236, C. A.; and see, further, title EXECUTORS AND ADMINISTRATORS, Vol. XV., pp. 255, 256, 258.

(*b*) *Re Hargreaves, Dicks* v. *Hare, supra*; and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 338. As to the right of the legatee of an annuity to obtain an administration judgment, see pp. 520 *et seq.*, *post*.

(*c*) *Re Hargreaves, Dicks* v. *Hare, supra*.

(*d*) *Ibid.*, at p. 239.

SECT. 3. Cases where upon the Donor's Death his Assets are Insufficient.

annuity from the estate of an insolvent intestate; he cannot, however, retain the estimated value of his annuity, but must come in and prove for the same as an ordinary creditor (*e*).

SUB-SECT. 2.—*Effect as regards Annuities Created by Testamentary Disposition.*

Where estate is at death insufficient.

971. Where a testator bequeaths immediate annuities and also pecuniary legacies, and his estate is ascertained at his death to be insufficient, the rule is to ascertain the value of each annuity as at the death (*f*); and, it being settled that, in a case of deficiency of assets, annuities and legacies abate rateably, the values so ascertained must abate proportionately with the legacies (*g*), and each annuitant is entitled to be paid at once the abated valuation of his annuity (*h*).

Where estate is after death found to be insufficient.

972. Where the estate is only ascertained at some point of time after the testator's death to be insufficient, and a distribution has gone on down to that point of time, the rules applicable appear to be as follows:—

Rules for valuation.

(1) If all the annuitants are living at that point of time, there must be ascertained in the case of each annuitant the arrears then due to him and the then present value of future payments. These two sums must be added together, and the funds available for payment of annuities must be divided between the annuitants in the proportion which the aggregate amounts bear to each other (*i*).

(2) If all the annuitants are dead at that point of time, there must be ascertained in the case of each annuitant the arrears then due to their respective estates, and the funds must be divided in the proportion of those arrears (*k*).

(3) If some of the annuitants are dead at that point of time and some are living, the values of the annuities of those annuitants who are dead must be fixed at what they would have actually received had the estate not been insufficient; and the values of the annuities of those annuitants who are living at that point of time must be ascertained by adding to the then present value of future payments the amount of the arrears then due. The funds must be divided in the proportion of those values (*l*).

Valuation of reversionary annuities.

973. Where a testator bequeaths a reversionary annuity and also immediate pecuniary legacies, and his estate is ascertained at his death to be insufficient, the court values the annuity on the basis of its being a reversionary interest, and this valuation must abate

(*e*) *Re Beeman, Fowler* v. *James*, [1896] 1 Ch. 48.

(*f*) *Long* v. *Hughes* (1831), 1 De G. & Sm. 364; see 2 Seton, Judgments and Orders, 7th ed., p. 1577, form 5; and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., pp. 276, 277.

(*g*) *Miller* v. *Huddlestone* (1851), 3 Mac. & G. 513.

(*h*) *Wroughton* v. *Colquhoun* (1847), 1 De G. & Sm. 357; *Daniell* v. *Daniell* (1849), 3 De G. & Sm. 337, 342.

(*i*) *Heath* v. *Nugent* (1860), 29 Beav. 226; *Re Wilkins, Wilkins* v. *Rotherham* (1884), 27 Ch. D. 703; *Delves* v. *Newington* (1885), 52 L. T. 512.

(*k*) *Todd* v. *Bielby* (1859), 27 Beav. 353, 356.

(*l*) *Ibid.*, at p. 357.

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rateably with the immediate legacies (*m*). Again, where in the case of a bequest of a reversionary annuity the estate is only ascertained at some point of time after the testator's death to be insufficient, and before that point of time the reversionary annuity has fallen into possession, the value of the reversionary annuity must be ascertained by adding the amount of the arrears accrued since the annuity fell into possession to the then present value of the future payments (*n*).

Division between immediate and reversionary annuitants.

Where a testator bequeaths two annuities, one immediate and the other reversionary, and the immediate annuity is for some time paid in full, but the estate is subsequently found to be insufficient, and such annuity remains for some time unpaid, then, in the division between the immediate and reversionary annuitants of the funds ultimately available, the immediate annuitant is not bound to bring into hotchpot his early payments in full (*o*).

Part V.—Payment of Rentcharges and Annuities.

SECT. 1.—*Deductions* (*p*).

Liability to income tax.

974. As regards the deduction of income tax in the case of annuities or rentcharges given by will the following rules apply:— Where a testator bequeaths an annuity without using any words exonerating the annuitant from income tax, the annuitant must bear it himself (*q*). In such a case it is the duty of trustees to deduct income tax before paying the annuitant (*r*). If they pay without deduction, they may, subject to any defence based on the Statutes of Limitation, be liable to make good the overpayment (*s*).

A testator, however, may (*t*) so frame his will as to exonerate

(*m*) *Re Metcalf, Metcalf* v. *Blencowe*, [1903] 2 Ch. 424, 428; *Innes* v. *Mitchell* (1846), 1 Ph. 710, 716.

(*n*) *Potts* v. *Smith* (1869), L. R. 8 Eq. 683, 687. If the reversionary interest has not fallen into possession at the point of time when the estate is ascertained to be insufficient, it would seem that the annuity should be valued as at that time on the basis of its being a reversionary interest. But this rule is not settled.

(*o*) *Re Metcalf, Metcalf* v. *Blencowe*, [1903] 2 Ch. 424; and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 277.

(*p*) For the material statutory provisions as regards income tax, see title INCOME TAX, Vol. XVI., pp. 607 *et. seq.*; and see in particular, *ibid.*, pp. 659—665. Section 1 of this part of the present title states the effect of the decisions as to the deduction of this tax in the case of rentcharges or annuities given (1) by will, or (2) by deed. For the rules as to deductions in respect of estate duty, settlement estate duty, legacy duty, and succession duty, see title ESTATE AND OTHER DEATH DUTIES, Vol. XIII., pp. 177 *et seq.*; and see, in particular, the notes *ibid.*, at pp. 222, 231, 241; see also *Re Egmont's (Earl) Settled Estates, Lefroy* v. *Egmont*, [1912] 1 Ch. 251, 260.

(*q*) *Re Sharp, Rickett* v. *Rickett*, [1906] 1 Ch. 793.

(*r*) *Re Sharp, Rickett* v. *Rickett, supra.*

(*s*) *Re Sharp, Rickett* v. *Rickett, supra.*

(*t*) Notwithstanding the Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 103; see title INCOME TAX, Vol. XVI., pp. 660, note (*o*), 663, 686.

SECT. 1. Deductions.

Exoneration by testator.

the annuitant or rentcharger from income tax (*u*) by using language amounting to a gift out of the testator's estate of an additional sum equal to the amount of the tax (*v*). As regards the construction of words of this nature, it is settled that income tax is not, properly speaking, a "deduction" (*a*). Accordingly, where a testator simply gives an annuity "free from all deductions," the annuitant must bear the income tax himself (*b*). Where, however, a testator directs that an annuity shall be "free from all deductions in respect of taxes," the word "deductions" is construed by the word "taxes," and the annuity is payable free of income tax (*c*); and, by other parts of his will, the testator may show that he understood the word "deductions" as extending to income tax (*d*).

Liability to income tax in the case of annual payments under deed.

975. As regards the deduction of income tax in the case of annuities or rentcharges payable under deeds the following rules apply. The Income Tax Act, 1842 (*e*), charges income tax upon annuities and other annual payments, and provides (*f*) that all contracts for payment of such annual payments without allowing the deduction of income tax shall be void. Having regard to these provisions, income tax is payable by the annuitant in the case of an annuity to a wife payable upon a divorce or under a deed of separation (*g*), even where the contract is to pay an annual allowance "clear of all deductions" (*h*).

Executor-annuitant.

976. When an executor is indebted to the estate, an annuity bequeathed to him may be applied in payment of the debt (*i*).

SECT. 2.—*Apportionment.*

SUB-SECT. 1.—*Apportionment in respect of Time.*

General rule.

977. All rentcharges, annuities, and other periodical payments in the nature of income, whether reserved or made payable under an instrument in writing or otherwise, are to be considered as

(*u*) *Festing* v. *Taylor* (1862), 3 B. & S. 217; see *Floyer* v. *Bankes* (1863), 9 Jur. (N. S.) 684.

(*v*) *Abadam* v. *Abadam* (1864), 33 Beav. 475.

(*a*) *Gleadow* v. *Leetham* (1882), 22 Ch. D. 269, 272; see *Re Parker-Jervis, Salt* v. *Locker*, [1898] 2 Ch. 643, 652.

(*b*) *Abadam* v. *Abadam, supra*; *Gleadow* v. *Leetham, supra*; compare the similar expressions which occurred in *Lethbridge* v. *Thurlow* (1851), 15 Beav. 334; *Sadler* v. *Rickards* (1857), 4 K. & J. 302; *Kinloch's Trustees* v. *Kinloch* (1880), 7 R. (Ct. of Sess.) 596.

(*c*) *Festing* v. *Taylor, supra*; compare the similar expressions which occurred in *Lovat* (*Lord*) v. *Leeds* (*Duchess*) (No. 1) (1862), 2 Drew. & Sm. 62; *Re Bannerman's Estate, Bannerman* v. *Young* (1882), 21 Ch. D. 105; see *contra*, *Wall* v. *Wall* (1847), 15 Sim. 513.

(*d*) *Turner* v. *Mullineux* (1861), 1 John. & H. 334; *Re Buckle, Williams* v. *Marson*, [1894] 1 Ch. 286, C. A.

(*e*) 5 & 6 Vict. c. 35, s. 102; see title INCOME TAX, Vol. XVI., p. 660, note (*o*).

(*f*) Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 103; see title INCOME TAX, p. 660, note (*o*).

(*g*) *Warren* v. *Warren* (1895), 72 L. T. 628; *Re Barry's Trusts, Barry* v. *Smart*, [1906] 2 Ch. 358, C. A.

(*h*) *Shrewsbury* v. *Shrewsbury* (1906), 22 T. L. R. 598; *Shrewsbury* (*Countess*) v. *Shrewsbury* (*Earl*) (1906), 23 T. L. R. 100; and see title INCOME TAX, Vol. XVI., p. 664.

(*i*) *Skinner* v. *Sweet* (1818), 3 Madd. 244; and see titles EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 271; LIEN, Vol. XIX., pp. 23, 24.

accruing from day to day and are apportionable in respect of time accordingly (*j*).

When apportioned part becomes payable.

The apportioned part becomes payable and recoverable, in the case of a continuing rentcharge or annuity, when the entire portion of which such apportioned part forms part becomes due and payable, and not before; and in the case of a rentcharge or annuity determined by re-entry, death, or otherwise, when the next entire payment would have been payable if the same had not been so determined, and not before (*k*).

Remedies for recovery.

All persons have the same remedies for recovering the apportioned parts, when payable, as they would have had for recovering the entire portions if they had been entitled thereto (*l*). Neither, however, the persons liable to pay rents reserved out of or charged on hereditaments of any tenure, nor the same hereditaments, are to be resorted to for any such apportioned part forming part of an entire or continuing rent specifically; but the entire or continuing rent, including such apportioned part, is to be recovered and received by the heir or other person who, if the rent had not been apportionable under the above provisions, or otherwise, would have been entitled to such entire or continuing rent, and the apportioned part is recoverable from such heir or other person by the executors or other parties entitled under the above provisions to the apportioned part (*m*).

Cases outside general rule.

978. The above provisions do not extend to any case in which it is expressly stipulated that no apportionment shall take place (*n*), provided the express stipulation is contained in the will or other instrument of gift (*o*). Nor do the provisions apply to an annuity payable in advance (*p*).

Apportionment on sale.

979. Upon the sale of a rentcharge, the contract usually provides for apportionment in respect of time as between the vendor and purchaser (*q*). If instalments of the rentcharge are in arrear, they should be expressly dealt with by the conveyance, otherwise they will not pass to the purchaser (*r*).

SUB-SECT. 2.—*Apportionment in respect of Space.*

Each and every portion of the land is liable.

980. According to the ordinary rule, a rentcharge is entire and issues out of every portion of the land charged (*s*), and the

(*j*) Apportionment Act, 1870 (33 & 34 Vict. c. 35), s. 2.
(*k*) *Ibid.*, s. 3.
(*l*) *Ibid.*, s. 4.
(*m*) *Ibid.*
(*n*) *Ibid.*, s. 7; *Re Meredith, Stone* v. *Meredith* (1898), 78 L. T. 492.
(*o*) *Re Oppenheimer, Oppenheimer* v. *Boatman*, [1907] 1 Ch. 399.
(*p*) *Trevalion* v. *Anderton* (1897), 66 L. J. (Q. B.) 489, C. A.
(*q*) See, for instance, Encyclopædia of Forms and Precedents, Vol. I., pp. 557, 560.
(*r*) See *Mirehouse* v. *Rennell* (1832), 8 Bing. 490, 494; *Flight* v. *Bentley* (1835), 7 Sim. 149, 151; *Salmon* v. *Dean* (1851), 3 Mac. & G. 344, 346.
(*s*) *Woodcock* v. *Titterton* (1864), 12 W. R. 865; see *Conolly* v. *Gorman*, [1898] 1 I. R. 20, C. A.; see also *Mills* v. *Cobb* (1866), L. R. 2 C. P. 95, 99 (where it was said that a rentcharge issuing out of Blackacre and Whiteacre cannot for the purposes of the parliamentary franchise be treated as issuing

SECT. 2. Apportionment.

rentcharger can have recourse to any one portion of the land for recovering the whole of any one instalment (*t*). But if A grants to B a rentcharge issuing out of Blackacre and Whiteacre, and afterwards sells Blackacre to C and Whiteacre to D, and the rentcharger resorts to Blackacre only, C can have contribution from D (*a*). So if on A's death Blackacre passes to C as devisee under A's will, and Whiteacre descends to D as A's heir, C and D must contribute rateably to the payment of the rentcharge (*b*).

Cases where rentcharge is apportioned.

981. In some cases, however, a rentcharge is apportioned and the owner of part of the land charged is only liable for an apportioned part. Thus, if A having a good title to Blackacre and a bad title to Whiteacre grants both properties to B, reserving in his own favour a rentcharge issuing out of both and B. is subsequently evicted from Whiteacre, the rentcharge will be apportioned, and B will only be liable for an apportioned part (*c*). If, however, instead of reserving a rentcharge to himself, A grants the rentcharge to a stranger and is subsequently evicted from Whiteacre, Blackacre will after eviction remain charged with the whole rent, for A cannot take advantage of the weakness of his own estate (*d*).

In the case of a rentcharge belonging to A which issues out of Blackacre and Whiteacre, if Blackacre descends on A, Whiteacre will only remain liable to an apportioned part of the rent (*e*).

An apportionment of a rentcharge between parishes may result from a statute (*f*).

Effect of release and concurrence of parties interested.

982. As regards the effect of releases, A having a rentcharge issuing out of Blackacre may release part of the rent to the tenant of Blackacre and reserve part (*g*). The release from a rentcharge of part of the hereditaments charged does not extinguish the whole rentcharge, but operates only to bar the right to recover any part of the rentcharge out of the hereditaments released, without prejudice nevertheless to the rights of all persons interested in the hereditaments remaining unreleased and not concurring in or confirming the release (*h*). The last-mentioned rule deals with a

out of Blackacre only); and see title ELECTIONS, Vol. XII., p. 148, note (*o*).

(*t*) See *Christie* v. *Barker* (1884), 53 L. J. (Q. B.) 537, 543, C. A.; Gilbert on Rents, p. 152.

(*a*) Cary, 3; see *Knight* v. *Calthorpe* (1685), 1 Vern. 347; *Webber* v. *Smith* (1689), 2 Vern. 103; *Averall* v. *Wade* (1835), L. & G. *temp.* Sugd. 252, 265, n.; *Booth* v. *Smith* (1884), 14 Q. B. D. 318, 322, 323, C. A.; *Christie* v. *Barker* (1884), 53 L. J. (Q. B.) 537, 542, C. A.; *Pertwee* v. *Townsend*, [1896] 2 Q. B. 129, 133; compare *Johnson* v. *Wild* (1890), 44 Ch. D. 146, 150. The nature of the indemnity which the other purchasers could require where land subject to one rentcharge was sold in lots, the purchaser of one lot to pay the rent, was considered in *Casamajor* v. *Strode* (1819), 2 Swan. 347.

(*b*) *Eyre* v. *Green* (1846), 2 Coll. 527, 534.

(*c*) *Hartley* v. *Maddocks*, [1899] 2 Ch. 199.

(*d*) Co. Litt. 148 b; compare *Roche* v. *Jordan*, [1896] 1 I. R. 494.

(*e*) 1 Roll. Abr. 236. As to the result where A acquires Blackacre either by purchase or by devise, see p. 510, *post*.

(*f*) *Sansom* v. *St. Leonard, Shoreditch* (1869), L. R. 4 C. P. 654.

(*g*) Co. Litt. 148 a.

(*h*) Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), s. 10.

rentcharge issuing out of Blackacre and Whiteacre, and distinguishes between the effect of a release of Blackacre where the persons interested in Whiteacre concur, and where they do not concur (*i*). In the former case the rentcharge is not apportioned, but is payable entirely out of Whiteacre (*k*). In the latter case Whiteacre is liable only to a proportionate part of the rentcharge (*l*).

Basis of apportionment.

983. Where in the above cases there must be an apportionment, the basis of the apportionment should be not the acreage of the several parts of the land, but their relative values (*m*).

Relative liability of freeholds and leaseholds.

984. Where a testator charges freeholds and leaseholds with a rentcharge, and disposes separately of the several properties, they are liable to contribute to the rentcharge in proportion to their respective annual values at the testator's death (*n*).

Compulsory purchase.

985. Where a rentcharge issues out of Blackacre and Whiteacre, and Blackacre alone is taken compulsorily under the Lands Clauses Consolidation Act, 1845 (*o*), the rentcharge may either be apportioned or be left to issue solely out of Whiteacre, compensation being determined and paid in accordance with the statute (*p*).

SECT. 3.—*Contribution to Payment as between Tenant for Life and Remainderman.*

In some cases, annuities payable out of income.

986. Where a testator bequeaths legacies and annuities and by the same will settles the residue upon a tenant for life and remainderman, the general rule is that as between tenant for life and remainderman the legacies are payable out of capital and the annuities out of income (*q*).

Rules for ascertaining respective liabilities of tenant for life and remainderman.

987. Where a testator who is liable as a debtor to pay an annuity settles his residue, questions have arisen as to the proportions which the tenant for life and remainderman must contribute to the annuity. To this question three different answers have been given:—(1) In some cases it has been ruled that each payment must be raised out of

According to the law before 1859, this would have extinguished the whole rentcharge (Shep. Touch., 7th ed. (1821), 345).

(*i*) *Booth* v. *Smith* (1884), 14 Q. B. D. 318, 324, C. A.

(*k*) *Price* v. *John*, [1905] 1 Ch. 744.

(*l*) *Booth* v. *Smith* (1884), 14 Q. B. D. 318, C. A.

(*m*) *Ewer* v. *Moyle* (1600), Cro. Eliz. 771; *Smith* v. *Malings* (1607), Cro. Jac. 160; *Hartley* v. *Maddocks*, [1899] 2 Ch. 199, 203; *Allison* v. *Jenkins*, [1904] 1 I. R. 341; *Salts* v. *Battersby*, [1910] 2 K. B. 155; compare the rules as to apportionment of rent service stated in title LANDLORD AND TENANT, Vol. XVIII., pp. 484, 485; and see Gilbert on Rents, p. 189. The date at which the value is to be taken may vary in different cases.

(*n*) *Young* v. *Hassard* (1844), 1 Jo. & Lat. 466; see *Fielding* v. *Preston* (1857), 1 De G. & J. 438; compare *Ley* v. *Ley* (1868), L. R. 6 Eq. 174, where two freehold properties, one mineral and the other agricultural, were by settlement charged with a rentcharge and were held liable to contribute thereto in proportion to actual income *de anno in annum* and not in proportion to the capitalised values.

(*o*) 8 & 9 Vict. c. 18.

(*p*) *Ibid.*, ss. 115, 116; see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., p. 146.

(*q*) See *Scholefield* v. *Redfern* (1863), 2 Drew. & Sm. 173, 180.

SECT. 3. Contribution to Payment as between Tenant for Life and Remainderman.

the *corpus* of the estate, the tenant for life bearing only the loss of income in respect of the sum raised (*r*). (2) In other cases the rule has been stated thus: Each instalment of the annuity must be dealt with separately; on the occasion of each payment there must be ascertained what sum set aside on the testator's death and accumulated at simple interest would have fully met the particular instalment; a portion of the instalment equivalent to this sum must be contributed by *corpus* and the balance by income (*s*). (3) In other cases the court, to avoid the inconvenience of separate calculations for each payment, has applied the following rule: There must be ascertained once for all at the testator's death the actuarial values of the life estate and the reversion, and each instalment of the annuity must be divided in that fixed proportion, and the income and *corpus* must contribute thereto accordingly (*t*).

Discretion of the court.

It seems that where there must be some apportionment, as between tenant for life and remainderman, the method of carrying it out is in the discretion of the court (*a*).

SECT. 4.—*Order of Priority in which Real and Personal Assets are Applicable in Payment of Rentcharges and Annuities.*

Where realty is primarily liable.

988. Where in a marriage settlement, whereby the settlor's personal estate receives no benefit, a jointure is secured on land and also by the settlor's covenant, the land is the primary source of payment (*b*).

Again, where an annuity granted for money value and secured by covenant is also by the deed charged on land, such land is, as between the persons claiming under the deceased grantor, primarily liable (*c*).

(*r*) *Re Henry, Gordon* v. *Gordon*, [1907] 1 Ch. 30; *Bulwer* v. *Astley* (1844), 1 Ph. 422; *Re Bacon, Grissel* v. *Leathes* (1893), 62 L. J. (CH.) 445; see the statement in the last case of the order made by CHITTY, J., in *Re Muffett, Jones* v. *Mason* (1888), 39 Ch. D. 534.

(*s*) *Re Perkins, Brown* v. *Perkins*, [1907] 2 Ch. 596. In this case the gift of the life estate was contingent; and in the calculation the date taken for setting aside the sum was not the testator's death, but the day on which the gift of the life estate vested. The above principle was adopted by JOYCE, J., in *Re Thompson, Thompson* v. *Watkins*, [1908] W. N. 195, and by PARKER, J., in *Re Poyser, Landon* v. *Poyser*, [1910] 2 Ch. 444. The rate of interest applied was 3 per cent. in *Re Perkins, Brown* v. *Perkins, supra*, and 3½ per cent. in *Re Poyser, Landon* v. *Poyser, supra*; compare *Allhusen* v. *Whittell* (1867), L. R. 4 Eq. 295; *Re Harrison, Townson* v. *Harrison* (1889), 43 Ch. D. 55, 61; *Fletcher* v. *Stevenson* (1844), 3 Hare, 360, 371; and see, further, title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 282.

(*t*) *Re Dawson, Arathoon* v. *Dawson*, [1906] 2 Ch. 211; *Yates* v. *Yates* (1860), 28 Beav. 637.

(*a*) *Re Poyser, Landon* v. *Poyser, supra*, at p. 448.

(*b*) *Lanoy* v. *Athol* (*Duke and Duchess*) (1742), 2 Atk. 444; *Loosemore* v. *Knapman* (1853), Kay, 123.

(*c*) Real Estates Charges Acts, 1854 (17 & 18 Vict. c. 113); 1877 (40 & 41 Vict. c. 34); see *Re Sharland, Kemp* v. *Rozey* (1896), 74 L. T. 664, C. A. Before the last-mentioned Acts the rule was different (*Young* v. *Furse* (1855), 20 Beav. 380; *Re Muffett, Jones* v. *Mason, supra*, at p. 537); and see titles EQUITY, Vol. XIII., p. 144; EXECUTORS AND ADMINISTRATORS, Vol. XIV., pp. 288 *et seq.*

SECT. 4. Order in which Assets are Applicable in Payment.

989. If a rentcharge is by will charged on land already subject to a mortgage, the rentcharger may be entitled to have the assets marshalled, and, notwithstanding the Real Estates Charges Act, 1854 (*d*), to throw the mortgage upon the personal estate (*e*).

Right of rentcharger to marshalling.

990. *Primâ facie* an annuity (which is a legacy (*f*)) given generally by will is payable out of personal estate only (*g*). Annuities may, however, be given so as to be payable out of real estate only (*h*), and in this case are more strictly known as rentcharges. If in either case there are several annuities and the sole source of payment proves insufficient, the annuities will abate rateably (*i*).

Annuities given by will.

Realty and personalty given separately.

Where, however, annuities are given so as to be payable out of both real and personal estate, and the real and personal estates are disposed of separately, questions of priority may arise. The general rule is that annuities are payable primarily out of the testator's personal estate, unless he has expressed an intention to the contrary (*j*); but, on the construction of the will, the primary liability may fall on the real estate (*k*), or the liability of the two properties may be rateable (*l*).

Realty and personalty given together.

Where the real and personal estates are disposed of together several distinctions have been taken. Thus, where the real estate is directed to be sold and there is a direction to pay an annuity out of the mixed fund, the real and personal estates are liable rateably (*m*); and the effect is the same where the proceeds of the real estate are directed to be part of the personal estate (*n*).

On the other hand, where the real estate is directed to be sold, but there is no direction to pay out of the mixed fund, the personal estate is primarily liable (*o*).

Where the real and personal estates are disposed of together, but the real estate is not directed to be sold, the personal estate, as a rule, remains primarily liable to pay the annuity (*p*). But in

(*d*) 17 & 18 Vict. c. 113.

(*e*) *Re Fry, Fry* v. *Fry*, [1912] 2 Ch. 86; *Buckley* v. *Buckley* (1887), 19 L. R. Ir. 544.

(*f*) *Heath* v. *Weston* (1853), 3 De G. M. & G. 601, C. A.; and see title WILLS.

(*g*) *Bench* v. *Biles* (1819), 4 Madd. 187, 188; see *Davis* v. *Gardiner* (1723), 2 P. Wms. 188; *Re Cameron, Nixon* v. *Cameron* (1884), 26 Ch. D. 19, C. A.

(*h*) *Lomax* v. *Lomax* (1849), 12 Beav. 285; *Ion* v. *Ashton* (1860), 28 Beav. 379; *Sinnett* v. *Herbert* (1871), L. R. 12 Eq. 201; *Woodhead* v. *Turner* (1851), 4 De G. & Sm. 429; *Poole* v. *Heron* (1873), 42 L. J. (CH.) 348.

(*i*) *Fitzgerald* v. *O'Connell* (1861), 11 I. Ch. R. 437; *Miller* v. *Huddlestone* (1851), 3 Mac. & G. 513.

(*j*) *Davies* v. *Ashford* (1845), 15 Sim. 42; *Brown* v. *Claxton* (1829), 3 Sim. 225; *Fitzgerald* v. *Field* (1826), 1 Russ. 416, 428.

(*k*) *Poole* v. *Heron* (1873), 42 L. J. (CH.) 348.

(*l*) See *Young* v. *Hassard* (1844), 1 Jo. & Lat. 466 (where freeholds and leaseholds contributed rateably).

(*m*) *Roberts* v. *Walker* (1830), 1 Russ. & M. 752; *Dunk* v. *Fenner* (1831), 2 Russ. & M. 557; *Bedford* v. *Bedford* (1865), 35 Beav. 584.

(*n*) *Simmons* v. *Rose* (1856), 6 De G. M. & G. 411.

(*o*) *Re Boards, Knight* v. *Knight*, [1895] 1 Ch. 499; *Elliott* v. *Dearsley* (1880), 16 Ch. D. 322, C. A.

(*p*) *Boughton* v. *Boughton, Boughton* v. *James* (1848), 1 H. L. Cas. 406, 437; *Tench* v. *Cheese* (1855), 6 De G. M. & G. 453, 467, C. A.; *Roberts* v.

SECT. 4. Order in which Assets are Applicable in Payment.

certain cases on construction the real and personal estates may be held rateably liable (*q*). The rule of rateable liability may be applied where the real estate is not directed to be sold, but the testator has shown an intention of creating a mixed fund of realty and personalty (*r*). Again, on construction, the primary liability may be thrown on the real estate, the general personal estate being secondarily liable (*s*).

SECT. 5.—*Interest on Arrears.*

Claim against general assets of testator or debtor. Annuity under will.

991. First, as to an annuity arising by will and constituting a voluntary gift to the annuitant. Where such an annuity falls into arrear, and, the annuitant claiming the arrears against the general assets of the testator, judgment is given for administration, interest is not as a general rule allowed on the arrears (*a*). By way of exception, interest may be given where there is misconduct or improper delay on the part of those chargeable with the payment of the annuity (*b*).

Annuity under deed.

992. Secondly, as to an annuity arising by covenant and constituting a debt to the annuitant. Where, after the death of the debtor, such an annuity falls into arrear, and, the annuitant claiming the arrears against the general assets of the debtor, judgment is given for administration, interest at 4 per cent. is allowed as to the arrears due at the judgment from the date of the judgment, and as to the instalments accruing after judgment from the dates when they accrue due (*c*).

Roberts (1843), 13 Sim. 336; *Re Ovey, Broadbent* v. *Barrow* (1885), 31 Ch. D. 113.

(*q*) *Falkner* v. *Grace* (1851), 9 Hare, 280, 282; *Howard* v. *Dryland* (1877), 38 L. T. 24.

(*r*) *Allan* v. *Gott* (1872), 7 Ch. App. 439; *Boughton* v. *James* (1844), 1 Coll. 26.

(*s*) *Paget* v. *Huish* (1863), 1 Hem. & M. 663, where the authorities are classified at pp. 668, 671; *Mann* v. *Copland* (1817), 2 Madd. 223.

(*a*) *Re Hiscoe, Hiscoe* v. *Waite*, [1902] W. N. 49; *Wheatley* v. *Davies* (1876), 24 W. R. 818; *Torre* v. *Browne* (1855), 5 H. L. Cas. 555; *Taylor* v. *Taylor* (1849), 8 Hare, 120; *Booth* v. *Coulton* (1861), 2 Giff. 514; *Batten* v. *Earny* (1723), 2 P. Wms. 163; *Creuze* v. *Hunter* (1793), 2 Ves. 157; *Anderson* v. *Dwyer* (1804), 1 Sch. & Lef. 301; *Aylmer* v. *Aylmer* (1828), 1 Moll. 87. In the older cases the rule was stated to be discretionary (*Morris* v. *Dillingham* (1750), 2 Ves. Sen. 170); and an exception was sometimes made in favour of the annuitant where the annuity was a provision for a wife or child (*Litton* v. *Litton* (1719), 1 P. Wms. 541; *Drapers Co.* v. *Davis* (1741), 2 Atk. 211). But this exception has been disapproved (*Torre* v. *Browne*, *supra*, at p. 578); compare the rule that interest will not be allowed on the arrears of a jointure, unless a special case be made (*Anon.* (1755), 2 Ves. Sen. 662; *Morgan* v. *Morgan and Jones* (1784), 2 Dick. 643; *O'Donnel* v. *Brown* (1810), 2 Moll. 519; *Knight* v. *Maclean* (1792), 3 Bro. C. C. 496; *Tew* v. *Winterton* (*Earl*), *Forster* v. *Forster* (1792), 1 Ves. 451; *Mellish* v. *Mellish* (1808), 14 Ves. 516; *Power* v. *Bennis* (1790), 2 Ridg. Parl. Rep. 256).

(*b*) *Torre* v. *Browne*, *supra*, at pp. 578, 579; *Blogg* v. *Johnson* (1867), 2 Ch. App. 225, 228, 229; see *Stapleton* v. *Conway* (1750), 1 Ves. Sen. 427; *Willcocks* v. *Butcher* (1848), 16 Sim. 366.

(*c*) *Re Salvin, Worseley* v. *Marshall*, [1912] 1 Ch. 332; compare title MORTGAGE, Vol. XXI., p. 226. The statement in the text is the result of R. S. C., Ord. 55, rr. 62, 63; see also *Lainson* v. *Lainson* (No. 2) (1853), 18

SECT. 5. Interest on Arrears.

Claim for interest against land charged.

993. The above rules govern the cases where the claim for interest is made against the general assets of a testator or of a debtor. Where the claim is made against the land charged with an annuity, the rule has been stated thus:—

Where an annuity which constitutes one of several incumbrances on land falls into arrear, and an action is commenced for redemption or foreclosure, then, as between incumbrances and as against the land charged, no interest on the arrears is as a general rule allowed (*d*). The allowance of interest on arrears in such a case was not justified by the ordinary provisions of the old annuity deeds (*e*), but may be justified by a special covenant on the part of the grantor of an annuity to indemnify the annuitant against other incumbrances (*f*).

Express gift of interest on arrears.

994. A clause in an annuity deed which expressly gives interest on arrears of the annuity is not objectionable (*g*).

Statutory remedies not affecting arrear

995. The statutory remedies conferred on annuitants and rentchargers (*h*) do not apparently enable them to recover interest on arrears (*i*).

Beav. 7 (where interest was allowed under the then existing rules of court). According to previous decisions given when no such rules were in force, interest in such a case was refused (*Booth* v. *Leycester* (1838), 3 My. & Cr. 459; *Jenkins* v. *Briant* (1848), 16 Sim. 272; see *Gay* v. *Cox* (1784), 1 Ridg. Parl. Rep. 153; and see *Mansfield* (*Earl*) v. *Ogle* (1859), 4 De G. & J. 38, *per* KNIGHT BRUCE, L.J., at p. 40). As regards the Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42), s. 28 (see title MONEY AND MONEY-LENDING, Vol. XXI., p. 38), it was said that the discretion previously exercised by the Court of Chancery as to allowing or not allowing interest was not altered by the discretion given in that statute to juries (*Re Powell's Trust* (1852), 10 Hare, 135; see *Mansfield* (*Earl*) v. *Ogle supra*,, at p. 42). In the case of annuities secured by bonds, interest was allowed, but not exceeding the penalty (*Newman* v. *Auling* (1747), 3 Atk. 579; *Mackworth* v. *Thomas* (1800), 5 Ves. 329; *Crosse* v. *Bedingfield* (1841), 12 Sim. 35; and see title BONDS, Vol. III., p. 93). In the case of annuities secured by judgments, interest on the judgments was formerly refused (*Bedford* v. *Coke* (1743), 1 Dick. 178; *Booth* v. *Leycester*, *supra*; see *Beamish* v. *Farmer* (1867), 1 I. R. Eq. 466). But since the Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 17, such a judgment carries interest (*Knight* v. *Bowyer* (1859), 4 De G. & J. 619, C. A.; see *Hyde* v. *Price* (1837), 8 Sim. 578); and see title JUDGMENTS AND ORDERS, Vol. XVIII., p. 209.

(*d*) *Mansfield* (*Earl*) v. *Ogle*, *supra*, explained in *Re Salvin*, *Worseley* v. *Marshall*, [1912] 1 Ch. 332; see *Robinson* v. *Cumming* (1742), 2 Atk. 409, 411 (where it was said that if an annuitant entered, the court would not have obliged him to quit, unless he were paid interest on arrears). As to interest on the arrears of a jointure, see the cases cited in note (*a*), p. 508, *ante*.

(*e*) See *Booth* v. *Leycester*, *supra*, *per* Lord COTTENHAM, L.C., at pp. 465, 466.

(*f*) *Martyn* v. *Blake* (1842), 3 Dr. & War. 125, 140.

(*g*) *Tynte* v. *Hodge*, *Tynte* v. *Beavan* (1864), 2 Hem. & M. 287, 312.

(*h*) *I.e.*, by the Conveyancing and Law of Property Acts, 1881 (44 & 45 Vict. c. 41), s. 44, and 1911 (1 & 2 Geo. 5, c. 37), s. 6; see pp. 514 *et seq.*, *post*.

(*i*) Compare *Booth* v. *Leycester*, *supra*, *per* Lord COTTENHAM, L.C., at pp. 465, 466.

Part VI.—Extinguishment of Rentcharges and Annuities.

SECT. 1. Extinguishment of Rentcharges.

SECT. 1.—*Extinguishment of Rentcharges.*

SUB-SECT. 1.—*Extinguishment by Act of the Rentcharger.*

Essentials to validity of release.

996. The owner of a rentcharge may extinguish the rentcharge by releasing it to the owner or owners of the land out of which it issues (*k*). In order to effect a valid extinguishment as against all parties, all persons who are interested in the rentcharge must execute the release; and the release must be to all parties who are interested in the land charged. Thus, if a man who is entitled absolutely and in his own right to a rentcharge issuing out of land grants the rentcharge to the absolute owner in his own right of the land, the rentcharge is extinguished; but if he grants it to the tenant for life of the land charged, the rentcharge is suspended only (*l*).

Release of portion of rentcharge.

997. A release of a portion of a rentcharge will operate as a release *pro tanto* (*m*), so that the owner of a rentcharge may release part of it without extinguishing the whole (*n*).

Release of portion of land charged.

998. If the owner of a rentcharge issuing out of land releases from the rentcharge part of the land, such release only operates to bar the right to recover any part of the rentcharge out of the land released (*o*).

SUB-SECT. 2.—*Extinguishment by Operation of Law.*

Cases of extinguishment by merger.

999. If a man is entitled absolutely and in his own right to a rentcharge issuing out of land, and the whole of the land is granted or devised to him absolutely and in his own right, the rentcharge is extinguished (*a*). So there is a complete extinguishment of the rentcharge if he becomes entitled absolutely and in his own right to

(*k*) Shep. Touch., 7th ed., p. 340; Com. Dig., tit. Release (E. 2); 18 Vin. Abr., 323, tit. Release, (T).

(*l*) Shep. Touch., 7th ed., p. 311; *Freeman* v. *Edwards* (1848), 2 Exch. 732, 741.

(*m*) "If a man hath a rentcharge of 20*s*., he may release to the tenant of the land 10*s*. or more or less, and reserve part" (Co. Litt. 148 a).

(*n*) 6 Bac. Abr., tit. Release, (C) 3. For form of release of rentcharge, see Encyclopædia of Forms and Precedents, Vol. I., p. 569.

(*o*) Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), s. 10. Before this Act the effect of such a release would have been to extinguish the whole rentcharge (6 Bac. Abr., tit. Release, (C) 3; 18 Vin. Abr. 504, tit. Rent, (B a); Shep. Touch., 7th ed., p. 345). As to the effect of a release of part of the land charged, see p. 504, *ante*.

(*a*) Shep. Touch., 7th ed., p. 311; *Freeman* v. *Edwards*, *supra*, at p. 737; *Swinfen* v. *Swinfen* (No. 3) (1860), 29 Beav. 199, 206.

part of the land either by purchase (*b*) or by devise (*c*). If, however, part of the land descends upon the owner of the rentcharge, there is not an extinguishment, but the rentcharge is apportioned (*d*).

The above rules depend upon merger. According to the present law there is no merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged in equity (*e*).

Rules dependent on merger.

1000. In equity, the rules applicable to the merger of estates in land and the merger of charges on land are, generally speaking, the same (*f*), and they depend largely on the intention of the parties (*g*). Thus, in equity, where a wife concurs with her husband in mortgaging her property to secure money paid to the husband, the wife's property is *primâ facie* a surety only (*h*). Where a person is entitled to land in fee, and his wife, in the event of her surviving him, is entitled for life to a rentcharge issuing out of the land, and he and his wife mortgage the land by a deed which purports to extinguish her rentcharge, her equity of redemption in the rentcharge is not released (*i*). Again, where there is no direct evidence of intention, courts of equity presume that merger was not intended, if it was to the interest of the party that merger should not take place (*k*). In accordance with this rule, where a tenant for life of land pays off a charge on the inheritance, *primâ facie* there is no merger, but the tenant for life is entitled to the charge for his own benefit (*l*). Even according to the old common law doctrine, where rent is granted in fee to the tenant for life of the land on which a rent is charged, the rent, it seems, is not extinguished, but is "put in suspense" during his life (*m*).

Rules as to presumption of merger.

1001. Further, it is a condition of merger that the land and the charge should be held by the same person at the same time and in the same right (*n*). Accordingly, where the owner of land out of which a rent issues grants that land to the rentcharger by way of

Conditions in which merger operates.

(*b*) Co. Litt. 147 b. If the rent is charged by way of further security on Whiteacre, and part of Whiteacre be granted to the rentcharger, there is no extinguishment (Co. Litt. 147 a).

(*c*) *Dennett* v. *Pass* (1834), 1 Bing. (N. C.) 388.

(*d*) Littleton's Tenures, s. 224. Where a rentcharge in fee issuing out of Blackacre descends upon the absolute owner of the whole of Blackacre, there is, it seems, an extinguishment of the rent (Co. Litt. 374 b).

(*e*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (4); and see titles EQUITY, Vol. XIII., pp. 146 *et seq.*; REAL PROPERTY AND CHATTELS REAL, p. 333, *ante*.

(*f*) *Capital and Counties Bank, Ltd.* v. *Rhodes*, [1903] 1 Ch. 631, 652, 653, C. A.; *Ingle* v. *Vaughan Jenkins*, [1900] 2 Ch. 368.

(*g*) *Capital and Counties Bank, Ltd.* v. *Rhodes*, *supra*.

(*h*) *Hall* v. *Hall*, [1911] 1 Ch. 487; and see, further, title HUSBAND AND WIFE, Vol. XVI., pp. 405, 406.

(*i*) *Re Betton's Trust Estates* (1871), L. R. 12 Eq. 553.

(*k*) *Capital and Counties Bank, Ltd.* v. *Rhodes*, *supra*; compare *Manks* v. *Whiteley*, [1912] 1 Ch. 735, C. A.

(*l*) *Burrell* v. *Egremont* (*Earl*) (1843), 7 Beav. 205.

(*m*) Littleton's Tenures, s. 560; Co. Litt. 313 a, 313 b (see *ibid.*, 267 b); *Freeman* v. *Edwards* (1848), 2 Exch. 732, 741.

(*n*) *Re Radcliffe, Radcliffe* v. *Bewes*, [1892] 1 Ch. 227, 231, C. A.

SECT. 1. Extinguishment of Rentcharges.

mortgage, there is no extinguishment of the rent (*o*); and it seems that a rentcharge, held by a person in his own right and issuing out of land, would not merge in the fee of the land coming to the same person as personal representative (*p*).

Escheat.

1002. Where the owner of a rentcharge dies intestate and without an heir, the law of escheat applies under a recent statute in the same manner as if the estate or interest of the deceased in the rentcharge were a legal estate in corporeal hereditaments (*q*).

Lapse of time.

1003. Where a rentcharge remains unpaid for more than twelve years, and there is no acknowledgment of the rentcharger's title, the rentcharge is extinguished (*r*).

SUB-SECT. 3.—*Statutory Provisions for the Redemption or Discharge of Rentcharges.*

Statutory redemption by owner or person interested.

1004. A perpetual rentcharge may be redeemed at the instance of the owner of the land or of any person interested therein (*s*). Where it is desired to redeem, a written requisition to that effect must be made to the Board of Agriculture and Fisheries (*a*) by such owner or person interested to certify the amount for which the rentcharge may be redeemed (*b*). If the person entitled to the rentcharge is in the position to give a good discharge for its capital value, the person redeeming may, after a month's notice in writing, pay or tender the amount certified by the Board (*c*). On proof of such payment or tender the Board is directed to certify that the land is discharged from the rent (*d*).

When statutory method inapplicable.

This statutory mode of redeeming a rentcharge is not applicable in the case of tithe rentcharge, or where the rent was reserved on a sale or lease or was made payable under a grant or licence for building purposes, or to any payment issuing out of land not being perpetual (*e*).

Application of capital moneys in redemption.

1005. Rentcharges, whether temporary or perpetual, created under statute to pay off advances for defraying the expenses of improve-

(*o*) *Elliot* v. *Hancock* (1690), 2 Vern. 143; compare *Freeman* v. *Edwards* (1848), 2 Exch. 732.

(*p*) *Chambers* v. *Kingham* (1878), 10 Ch. D. 743, 746.

(*q*) Intestates Estates Act, 1884 (47 & 48 Vict. c. 71), s. 4; and see title DESCENT AND DISTRIBUTION, Vol. XI., p. 24. Before the Act the rentcharge did not escheat but became extinct; see 3 Co. Inst. 21. The intention of this statute seems to have been that the rentcharge should escheat to the Crown, but this is not clear; see Challis, Law of Real Property, 3rd ed., pp. 39, 40.

(*r*) *Shaw* v. *Crompton*, [1910] 2 K. B. 370; see pp. 523 *et seq.*, *post*; and see title LIMITATION OF ACTIONS, Vol. XIX., p. 155.

(*s*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 45 (1), (5).

(*a*) The functions of the Board in this respect were formerly vested in the Land Commissioners for England, and prior to that in the Copyhold Commissioners; see title AGRICULTURE, Vol. I., pp. 297 *et seq.*

(*b*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 45 (1).

(*c*) *Ibid.*, s. 45 (2).

(*d*) *Ibid.*, s. 45 (3).

(*e*) *Ibid.*, s. 45 (5).

SECT. 1. Extinguishment of Rentcharges.

ments under the Settled Land Act, 1882 (*f*), may be redeemed by capital moneys arising under the Settled Land Acts (*g*).

Payment of redemption moneys into court on sale of land charged.

1006. Where land charged with an annual sum is sold, the court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into court of (1) such an original amount as when invested in Government securities the court considers will be sufficient by dividends to provide for the charge; and (2) such additional amount, not exceeding in ordinary cases one-tenth of the original amount, as the court considers will meet costs, expenses, interest, and any other contingency except depreciation of investments. Thereupon the court may, if it thinks fit, and either after or without notice to the incumbrancer, declare the land to be free from the charge and make orders for conveyance or vesting to give effect to the sale (*h*). This provision applies in the case of annuities charged on land (*i*), but not, it seems, in the case of statutory rentcharges (*k*). In any case, the court does not under this provision compel the vendor to pay money into court for the purpose of discharging an incumbrance on land, when the result of so doing would be to inflict a great hardship upon him (*l*).

Sale by limited owner.

1007. Where land subject to a rentcharge created under the Improvement of Land Act, 1864 (*m*), is sold by the tenant for life under the powers of the Settled Land Acts (*n*), the vendor can, by charging the rentcharge on settled land remaining unsold, exonerate the land sold (*o*).

SECT. 2.—*Extinguishment of Annuities.*

By release.

1008. An annuity may be extinguished by release on the part of the annuitant (*p*).

By redemption.

As regards extinction by redemption, unless there is a special provision for redemption in the deed granting the annuity, an annuity is not redeemable (*q*).

(*f*) 45 & 46 Vict. c. 38.

(*g*) Settled Land Acts (Amendment) Act, 1887 (50 & 51 Vict. c. 30), s. 1; and see title LAND IMPROVEMENT, Vol. XVIII., p. 292.

(*h*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 5. *Ibid.*, s. 69, provided that, on an application by a purchaser, notice should be served in the first instance on the vendor, and that, on an application by a vendor, notice should be served in the first instance on the purchaser; but these notices may now be dispensed with (Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 1).

(*i*) *Re Evans and Bettell's Contract*, [1910] 2 Ch. 438.

(*k*) *Re Great Northern Rail. Co. and Sanderson* (1884), 25 Ch. D. 788.

(*l*) *Ibid.*

(*m*) 27 & 28 Vict. c. 114; and see title LAND IMPROVEMENT, Vol. XVIII., p. 297.

(*n*) See titles SALE OF LAND; SETTLEMENTS.

(*o*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 5; *Re Strafford (Earl) and Maples*, [1896] 1 Ch. 235, C. A.

(*p*) See Shep. Touch. 7th ed., pp. 322, 342. The release should, generally speaking, be by deed; see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 363. For form of release of annuity, see Encyclopædia of Forms and Precedents, Vol. I., p. 539.

(*q*) *Coverley* v. *Burrell* (1821), 5 B. & Ald. 257, *per* ABBOTT, C.J., at p. 259 (decided when the grant of annuities was an ordinary mode of raising

Part VII.—Remedies for Recovering Rentcharges and Annuities.

SECT. 1. In General.

SECT. 1.—*In General.*

General nature of remedies.

1009. The remedies for recovering rentcharges and annuities are of various kinds, and either have been expressly given by the instrument creating the interest, or arise by statute (*r*), or result from the court's action in enforcing payment.

SECT. 2.—*Remedies for Recovering Rentcharges.*

SUB-SECT. 1.—*In General.*

Remedies open to owner of rentcharges.

1010. Remedies for recovering rentcharges may be of the following kinds:—(1) distress; (2) an entry under a special power on the land charged; (3) the limitation under a special power of a term on trust to raise arrears; (4) an action of covenant; (5) an action of debt; (6) a sale or mortgage of the land charged; (7) the appointment of a receiver (*s*). The owner of a rentcharge cannot obtain an injunction to restrain waste by the owner of the land out of which the rentcharge issues (*t*).

Different remedies available.

1011. The owner of a rentcharge may be entitled to pursue several different remedies (*u*). In the case of a rentcharge secured by a right of entry and also by a term, the right of entry does not destroy the term, nor does the term defeat the right of entry (*v*).

SUB-SECT. 2.—*Distress.*

Distress.

1012. A power of distress is of the essence of a rentcharge. It may be given by express provision. Apart from express provision, the Conveyancing and Law of Property Act, 1881 (*a*), confers the power upon the owner of every annual sum payable out of land, whether by way of rentcharge or otherwise, and arising under an instrument coming into operation after the 31st December,

money); see *Irnham* v. *Child* (1781), 1 Bro. C. C. 92. Of course, where such provisions occurred, an annuity was redeemable under them (*ibid.*); and see *King* v. *Chaplin* (1863), 9 Jur. (N. S.) 984.

(*r*) See note (*g*), p. 472, *ante*.

(*s*) See also title CHARITIES, Vol. IV., pp. 201 *et seq.*

(*t*) *Sandeman* v. *Rushton* (1891), 61 L. J. (CH.) 136; see *Fairfield* v. *Weston* (1824), 2 Sim. & St. 96.

(*u*) *Searle* v. *Cooke* (1890), 43 Ch. D. 519, 533, C. A.

(*v*) *Doe* d. *Butler* v. *Kensington* (*Lord*) (1846), 8 Q. B. 429.

(*a*) 44 & 45 Vict. c. 41, s. 44 (2); and see title DISTRESS, Vol. XI., p. 120. The powers conferred by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), apply not only in the case of annual sums arising under instruments coming into operation since the 31st December, 1881, but also in the case of rentcharges created under the Copyhold Acts, 1887 (50 & 51 Vict. c. 73), s. 15, and 1894 (57 & 58 Vict. c. 46), s. 27 (a) (see title COPYHOLDS, Vol. VIII., p. 120), or created under the Improvement of Land Act, 1899 (62 & 63 Vict. c. 46), s. 3. As to the recovery of a rentcharge in respect of a land improvement, see title LAND IMPROVEMENT, Vol. XVIII., p. 298.

1881. In the case of rentcharges arising under earlier instruments, the power was conferred by the Landlord and Tenant Act, 1730 (*b*).

In the case of rentcharges reserved on conveyances under the Lands Clauses Consolidation Act, 1845 (*c*), an express power is given to the rentcharger of distraining on the goods and chattels of the promoters (*d*).

Extent of remedy.

1013. Where a rentcharge is held by several as tenants in common each owner may distrain (*e*).

A single owner of a rentcharge cannot distrain for part of the rent on one piece of the land and for another part on the remainder (*f*). Where an annuity is charged on an undivided moiety of land, the distress may be limited to one half of the rents (*g*).

In the case of a rentcharge charged by will on land in the occupation of tenants and secured by a power of distress, the rentcharger must wait for payment until the first rent day which occurs after an instalment accrues due (*h*).

SUB-SECT. 3.—*Entry under a Special Power on the Land Charged.*

Dual nature of power.

1014. The power of entry has taken two forms, namely, (1) a power for the owner of the rentcharge in default of payment to enter and hold the land until satisfaction of the arrears; and (2) a power for the owner of the rentcharge in default of payment to enter and hold the land as his own; the power in the latter form being in effect a power of forfeiture (*i*).

Power to enter and hold land until satisfaction.

1015. In the case of rentcharges arising under instruments coming into operation after the 31st December, 1881, a power in the first form is conferred on the rentcharger by the Conveyancing and Law of Property Act, 1881 (*j*); and, in the case of rentcharges arising under instruments which came into operation before the 1st January, 1882, a power of the same nature was frequently

(*b*) 4 Geo. 2, c. 28, s. 5; see p. 466, *ante*. The Law of Distress Amendment Act, 1908 (8 Edw. 7, c. 53), only applies as between landlord and tenant; see also title DISTRESS, Vol. XI., pp. 120, 121.

(*c*) 8 & 9 Vict. c. 18.

(*d*) *Ibid.*, s. 11; and see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., p. 59.

(*e*) *Rivis* v. *Watson* (1839), 5 M. & W. 255; *Harrison* v. *Barnby* (1793), 5 Term Rep. 246.

(*f*) *Owens* v. *Wynne* (1885), 4 E. & B. 579.

(*g*) *Ashwin* v. *Bullock* (1899), 81 L. T. 48; compare *Hills* v. *Webber* (1901), 17 T. L. R. 513, C. A.

(*h*) *Hasluck* v. *Pedley* (1874), L. R. 19 Eq. 271.

(*i*) See Encyclopædia of Forms and Precedents, Vol. XII., pp. 599, 630, 638.

(*j*) 44 & 45 Vict. c. 41, s. 44 (1), (3). Where the instrument under which the rentcharge arises, and which comes into operation after the 31st December, 1881, in fact exercises a power of appointment, but such power of appointment was contained in an instrument which came into operation before the 1st January, 1882, the power of entry conferred by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 44 (3), equally applies; see Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 6 (2).

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conferred by the instrument itself (*k*). The rule of law relating to perpetuities does not apply to a power of this nature, whether conferred by the Conveyancing and Law of Property Act, 1881 (*l*), or by the instrument under which the rentcharge arises (*m*).

Where a power in the form first above mentioned is limited by way of use, and the rentcharger enters under it, he has a *quasi*-conditional inheritance determinable upon payment of the rent, and may grant a lease, which is good until such payment (*n*). He may also, it seems, enforce the covenants in existing leases (*o*).

Power of forfeiture.

1016. A power in the form secondly above mentioned is, it seems, void unless limited in accordance with the rule against perpetuities (*p*).

Covenants with grantee of rentcharge secured by power of re-entry.

1017. Sometimes the grantor of a rentcharge enters into covenants with the grantee, either in the form of positive covenants for repairing or building or doing other acts upon the land, or of negative covenants restricting its user, and then secures the performance of these covenants by a power of re-entry. As regards the enforcement of these covenants apart from the power of re-entry, it is settled that the burden of such positive covenants does not run with the land either at law or in equity so as to be enforceable against subsequent owners (*q*). Negative covenants, however, are enforceable in equity

(*k*) See the form in Encyclopædia of Forms and Precedents, Vol. XII., p. 638; *Re Manchester and Milford Rail. Co., Forster* v. *Manchester and Milford Rail. Co.* (1880), 49 L. J. (CH.) 454. It seems that such a power might have been implied (*Foster* v. *Foster* (1700), 2 Vern. 386).

(*l*) See note (*g*), p. 472, *ante*.

(*m*) Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 6 (1). As to the doubts on this point expressed before the last-mentioned Act, see Lewis, Law of Perpetuity, p. 618; Gilbert on Rents, pp. 139, 140; Williams, Vendor and Purchaser, 2nd ed., pp. 435, 436; and see title PERPETUITIES, Vol. XXII., pp. 314, 315, 331, 332.

(*n*) *Havergill* v. *Hare* (1618), Cro. Jac. 510; *Jemot* v. *Cooly* (1666), T. Raym. 135, 158; Co. Litt. 203 a, n. Burton, Compendium, art. 867, refers to the estate of a person entering as a chattel interest. As to whether the land can be charged by the person entering with the expense of repairs, see *Hooper* v. *Cooke* (1855), 20 Beav. 639; (1856) 2 Jur. (N. S.) 527.

(*o*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 10; *Turner* v. *Walsh*, [1909] 2 K. B. 484.

(*p*) According to the law as it existed before the Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), such a power was void (*Re Hollis' Hospital (Trustees) and Hague's Contract*, [1899] 2 Ch. 540, 555; see *Re Da Costa* v. *Church of England Collegiate School of St. Peter*, [1912] 1 Ch. 337), though the contrary opinion was maintained by some writers (Challis, Law of Real Property, 3rd ed., p. 190; Law Quarterly Review, Vol. XVII., p. 32); see also the Real Property Commissioners' 3rd Report, p. 37; compare *Switzer & Co.* v. *Rochford*, [1906] 1 I. R. 399; *A.-G.* v. *Cummins* (1895), [1906] 1 I. R. 406. The words, however, of the Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 6 (1), raise considerable doubt whether according to the present law the rule against perpetuities applies at all to a power in this form. In some cases powers in this form have been treated in equity as entitling the rentcharger to hold until the rent is paid, but no longer; see note to *Peachy* v. *Somerset* (*Duke*) (1724), 2 White & Tud. L. C., 8th ed., p. 261; and see, further, title PERPETUITIES, Vol. XXII., pp. 299, 314, 331, 332.

(*q*) *Haywood* v. *Brunswick Building Society* (1881), 8 Q. B. D. 403, C. A.;

against all subsequent owners, except *bonâ fide* purchasers for value of the legal estate without notice (*r*). As regards the power of re-entry, it is doubtful whether its exercise should be restricted within the period allowed by the rule against perpetuities (*s*).

Notices required.

1018. A rentcharger intending to re-enter must, before doing so, serve the notices required by statute (*t*).

Arrears subsequent to death of life tenant.

1019. Where, in the case of a rentcharge granted by a life tenant, the rentcharger does not in fact enter during the life, he cannot claim arrears out of apportioned rent subsequently accruing (*u*).

SUB-SECT. 4.—*Limitation under a Special Power of a Term on Trust to Raise Arrears.*

Limitation of a term on trust to raise arrears.

1020. In the case of rentcharges arising under instruments coming into operation before the 1st January, 1882, a power to limit a term on trust to raise arrears was frequently conferred by the instrument, and, in the case of rentcharges arising under instruments coming into operation after the 31st December, 1881, this power is conferred on the owner by the Conveyancing and Law of Property Act, 1881 (*x*), so far as such a remedy might have been conferred by the instrument under which the rentcharge arises, but not further (*y*).

Effect of perpetuity rule.

Neither to the statutory power so conferred nor to "the same or a like power" conferred by the instrument does the rule of law relating to perpetuities apply (*z*).

SUB-SECT. 5.—*Action of Covenant.*

1021. The due payment of a rentcharge is frequently secured by the covenant of the landowner who creates it (*a*). The burden of

Hall v. *Ewin* (1887), 37 Ch. D. 74, C. A.; and see title EQUITY, Vol. XIII., pp. 100, 101.

(*r*) *Re Nisbet and Potts' Contract*, [1905] 1 Ch. 391; affirmed, [1906] 1 Ch. 386, C. A.; and see titles EQUITY, Vol. XIII., pp. 100, 101; LANDLORD AND TENANT, Vol. XVIII., pp. 590, 591.

(*s*) See, on the one hand, Real Property Commissioners' 3rd Report, p. 37; see, on the other, *Dunn* v. *Flood* (1883), 25 Ch. D. 629; affirmed (1885), 28 Ch. D. 586, 592, C. A.; *Re Hollis' Hospital* (*Trustees*) *and Hague's Contract*, [1899] 2 Ch. 540; compare *Re Dobbs, Ex parte Ralph, Ex parte Hastings* (1845), De G. 219; and see title PERPETUITIES, Vol. XXII., p. 315, note (*q*).

(*t*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 14 (3). As to entry by the annuitant under the old law, compare *Doe* d. *Biass* v. *Horsley* (1834), 1 Ad. & El. 766.

(*u*) *Re Anglesey's* (*Marquis*) *Estate, Paget* v. *Anglesey* (1874), L. R. 17 Eq. 283. For the effect of a want of entry, where a term was granted to secure an annuity, compare *Miller* v. *Green* (1831), 8 Bing. 92, Ex. Ch.; and see *Gresley* v. *Adderley, Gresley* v. *Heathcote* (1818), 1 Swan. 573, 579.

(*x*) 44 & 45 Vict. c. 41, s. 44 (1), (4).

(*y*) *Ibid.*, s. 44 (1). The instrument creating the rentcharge frequently itself limits a term to trustees upon trusts for securing payment; as to which trusts, see *Jenkins* v. *Milford* (1820), 1 Jac. & W. 629; *Doe* d. *Butler* v. *Kensington* (*Lord*) (1846), 8 Q. B. 429.

(*z*) Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 6 (1); and see title PERPETUITIES, Vol. XXII., p. 299, note (*d*).

(*a*) See the forms in Encyclopædia of Forms and Precedents, Vol. I., pp. 508 *et seq.* The question as to what words amount to a covenant is

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such a covenant does not run with the land so as to bind subsequent owners of the land (*b*); nor, it seems, does the benefit of the covenant run with the rentcharge so as to entitle subsequent owners of the rentcharge to sue (*c*).

Where in a marriage settlement a jointure is secured on land, and is also secured by the settlor's covenant, the land is the primary source of payment (*d*). Where the remedy against the land is extinguished, the remedy on the covenant is extinguished also (*e*).

SUB-SECT. 6.—*Action of Debt.*

Nature of remedy.

1022. Since the abolition of real actions by the Real Property Limitation Act, 1833 (*f*), a rentcharge in fee may be recovered in an action of debt from the terre tenant entitled to a freehold interest (*g*), even where he is terre tenant of part only of the land charged with the rent (*h*).

Who may be liable.

The terre tenant must be "pernor of the profits" of the land (*i*); but he may be made liable whether he has or has not received profits equal to the rentcharge claimed (*k*); and if the freeholder has

discussed in Norton on Deeds, pp. 483 *et seq.*; and see title DEEDS AND OTHER INSTRUMENTS, Vol. X., pp. 475 *et seq.* An agreement to sell land for an annuity to be charged thereon in favour of the vendor for his life entitles him to the purchaser's personal covenant for payment (*Bower* v. *Cooper* (1842), 2 Hare, 408). Where an annuity was granted to commence on the grantor's death, and he charged it on land and covenanted that the annuitant might distrain for any arrears, and it turned out that the grantor was only a tenant for life of the land charged, the annuitant was allowed to recover arrears from the grantor's estate by an action of covenant (*Monypenny* v. *Monypenny* (1861), 9 H. L. Cas. 114; see *Piggott* v. *Stratton* (1859), 1 De G. F. & J. 33, 47, C. A.); compare *Teasdale* v. *Teasdale* (1726), Cas. *temp.* King, 59; *Ford* v. *Tynte* (1865), 2 De G. J. & Sm. 557, C. A. (where a jointure was charged on land in which the settlor had only a life interest, and his life interest was not affected by the charge); and see *Knight* v. *Bowyer* (1857), 23 Beav. 609.

(*b*) *Haywood* v. *Brunswick Building Society* (1881), 8 Q. B. D. 403, 410, C. A.; *Austerberry* v. *Oldham Corporation* (1885), 29 Ch. D. 750, 785, C. A.; see *Brewster* v. *Kidgill* (1698), 12 Mod. Rep. 166, 170; *Butler* v. *Archer* (1860), 12 I. C. L. R. 104; *Re Blackburn and District Benefit Building Society, Ex parte Graham* (1889), 42 Ch. D. 343, 350, C. A.

(*c*) *Milnes* v. *Branch* (1816), 5 M. & S. 411; *Randall* v. *Rigby* (1838), 4 M. & W. 130, 135; *Kennedy's Executors* v. *Stewart* (1836), 7 I. L. R. 421, n.; see 1 Wms. Saund. 303.

(*d*) *Lanoy* v. *Athol* (*Duke and Duchess*) (1742), 2 Atk. 444; *Loosemore* v. *Knapman* (1853), Kay, 123.

(*e*) *Shaw* v. *Crompton*, [1910] 2 K. B. 370; and see title LIMITATION OF ACTIONS, Vol. XIX., p. 155.

(*f*) 3 & 4 Will. 4, c. 27, s. 36; and see title ACTION, Vol. I., p. 46.

(*g*) *Varley* v. *Leigh* (1848), 2 Exch. 446 (where the terre tenant had personally covenanted to pay the rentcharge); *Thomas* v. *Sylvester* (1873), L. R. 8 Q. B. 368 (a decision independent of covenant); *Bowman* v. *Smith* (1885), 2 T. L. R. 101; *Searle* v. *Cooke* (1890), 43 Ch. D. 519, C. A. Before the Judicature Acts the rule did not apply where the land was situate outside England and Ireland (*Whitaker* v. *Forbes* (1875), L. R. 10 C. P. 583; affirmed, 1 C. P. D. 51, C. A.).

(*h*) *Christie* v. *Barker* (1884), 53 L. J. (Q. B.) 537, C. A. In such a case the terre tenant would be entitled to contributions from co-owners (*ibid.*).

(*i*) *Swift* v. *Kelly* (1889), 24 L. R. Ir. 478, C. A.

(*k*) *Pertwee* v. *Townsend*, [1896] 2 Q. B. 129, where see the remarks on the decision of the Irish Vice-Chancellor in *Odlum* v. *Thompson* (1893), 31 L. R. Ir. 394.

an immediate right to take possession, he has sufficient "pernancy of the profits" to render him liable (*l*). Accordingly, a mortgagee who has never entered may be liable (*m*), also a highway authority (*n*); but a company which is being wound up is not liable after the liquidator has repudiated the land charged (*o*), nor is a tenant for years liable in such an action (*p*).

Special statutory remedy.

In the case of rentcharges reserved on conveyances under the Lands Clauses Consolidation Act, 1845 (*q*), an express power of recovering arrears by action of debt in a superior court is given to the rentcharger by statute (*r*).

Statutory protection to personal representatives.

1023. Where an executor or administrator liable as such to the rent or covenants contained in any conveyance on chief rent or rentcharge, whether any such rent is by limitation of use, grant, or reservation, granted to the testator or intestate (1) has satisfied all such liabilities accrued due and claimed, and (2) has set apart a sufficient fund to answer claims in respect of fixed sums, if any, covenanted by the grantee to be laid out on the property, and (3) has conveyed such property to a purchaser, he may distribute the residuary personal estate of the deceased without appropriating any part thereof to meet future liability (*s*). But this provision does not prejudice the right of the grantor or those claiming under him to follow the assets (*s*).

SUB-SECT. 7.—*Sale or Mortgage of the Land Charged.*

By order of court.

1024. For the purpose of raising the arrears of a rentcharge, the court may order a sale or mortgage of the land charged, both where the rentcharge is expressly charged on the fee simple (*t*) and also where it issues out of the rents and profits (*u*). But the exercise of the jurisdiction is discretionary (*x*), and no order will be made

(*l*) *Cundiff* v. *Fitzsimmons*, [1911] 1 K. B. 513, 518.

(*m*) *Ibid.*; and see title MORTGAGE, Vol. XXI., p. 169.

(*n*) *Foley's Charity Trustees* v. *Dudley Corporation*, [1910] 1 K. B. 317, C. A.; and see title HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., pp. 54, note (*g*), 58, note (*t*).

(*o*) *Re Blackburn and District Benefit Building Society, Ex parte Graham* (1889), 42 Ch. D. 343, C. A.; see *Graham* v. *Edge* (1888), 20 Q. B. D. 683, 688, C. A. (where the liquidator was held not to be personally liable).

(*p*) *Re Herbage Rents, Greenwich, Charity Commissioners* v. *Green*, [1896] 2 Ch. 811; see title CHARITIES, Vol. IV., p. 202.

(*q*) 8 & 9 Vict. c. 18.

(*r*) *Ibid.*, s. 11; and see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., p. 59.

(*s*) Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), s. 28; and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 255.

(*t*) *Blackburne* v. *Hope-Edwards*, [1901] 1 Ch. 419, 423; *White* v. *James* (No. 2) (1858), 26 Beav. 191; *Scottish Widows' Fund* v. *Craig* (1882), 20 Ch. D. 208, 214; *Picard* v. *Mitchell* (1851), 14 Beav. 103; *Byam* v. *Sutton* (1854), 19 Beav. 556; *Cupit* v. *Jackson* (1824), 13 Price, 721; and see *Pettinger* v. *Ambler* (1865), 34 Beav. 542 (where a reversion was sold).

(*u*) *Hambro* v. *Hambro*, [1894] 2 Ch. 564; see, *contra*, *Philipps* v. *Philipps* (1844), 8 Beav. 193.

(*x*) *Hambro* v. *Hambro*, *supra*; *Blackburne* v. *Hope-Edwards*, *supra*; *Clifford* v. *Turrell* (1841), 1 Y. & C. Ch. Cas. 138; see *Harrisson* v. *Mason* (1849), 12 I. Eq. R. 245 (where questions were raised between the tenant for life of the land and the remainderman).

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where a sale is not necessary for any other purpose and it is advisable to wait (*y*), or where an immediate sale ought not to be imposed on the parties interested (*z*). If the rentcharge is secured by a term, the owner is not entitled to a sale of the fee simple (*a*).

If the land has been sold compulsorily, arrears are paid out of the purchase-money (*b*).

SUB-SECT. 8.—*Appointment of a Receiver.*

By order of court.

1025. The appointment of a receiver may be obtained from the High Court by the owner of a rentcharge where the rents are not sufficient or where the rentcharge has been long in arrear (*c*). The recovery of arrears of tithe rentcharge arising in England or Wales may be enforced by application to the county court for a receiver (*d*). Receivers may also be appointed to enforce rentcharges which have been reserved on conveyances under the Lands Clauses Consolidation Act, 1845 (*e*), and by statute charged on the tolls or rates of the undertaking (*f*).

Out of court.

1026. Out of court, the appointment of a receiver by deed under special powers is also adopted as a means of securing an annuity (*g*). Such an appointment may create an equitable charge (*h*).

SECT. 3.—*Remedies for Recovering Annuities.*

SUB-SECT. 1.—*Administration Action.*

Annuitants entitled to judgment for administration.

1027. The legatee of an annuity charged on residue is entitled to a judgment for administration of the estate of the deceased (*i*). A

(*y*) *Graves* v. *Hicks* (1841), 11 Sim. 536, 551.

(*z*) *Re Taylor's Estate Act, Taylor* v. *Taylor* (1874), L. R. 17 Eq. 324; *Horton* v. *Hall* (1874), L. R. 17 Eq. 437; *Re Tucker, Tucker* v. *Tucker*, [1893] 2 Ch. 323.

(*a*) *Hall* v. *Hurt* (1861), 2 John. & H. 76; *Blackburne* v. *Hope-Edwards*, [1901] 1 Ch. 419, 423. In a case where a rentcharge was secured by a term and the land was settled, arrears were paid out of capital moneys without prejudice to any question between the tenant for life and remainderman, see *Re Manchester's (Duke) Settlement*, [1910] 1 Ch. 106.

(*b*) *Re Tinkler's Trusts* (1852), 5 De G. & Sm. 722.

(*c*) *Kelsey* v. *Kelsey* (1874), L. R. 17 Eq. 495, 500; see *Garfitt* v. *Allen, Allen* v. *Longstaffe* (1887), 37 Ch. D. 48, 50; *Sollory* v. *Leaver* (1869), L. R. 9 Eq. 22; and see the earlier decisions, *Pritchard* v. *Fleetwood* (1815), 1 Mer. 54; *Davis* v. *Marlborough (Duke)* (1818), 1 Swan. 74; (1819), 2 Swan. 108; *Brooks* v. *Greathed* (1820), 1 Jac. & W. 176; *Tanfield* v. *Irvine* (1826), 2 Russ. 149 (where the grantor of the rentcharge was abroad); and see title RECEIVERS, pp. 348 *et seq.*, 365 *et seq.*, *ante*.

(*d*) Tithe Act, 1891 (54 & 55 Vict. c. 8), s. 2 (3); and see title ECCLESIASTICAL LAW, Vol. XI., p. 749. As to the duties of such a receiver, see *Saunderson* v. *Stoney* (1839), 2 I. Eq. R. 153; *Madden* v. *Wilson* (1854), 6 Ir. Jur. 129.

(*e*) 8 & 9 Vict. c. 18, s. 11; and see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., p. 59.

(*f*) *Eyton* v. *Denbigh, Ruthin, and Corwen Rail. Co.*, (1868), L. R. 6 Eq. 14; and see title RECEIVERS, p. 365, *ante*.

(*g*) *Knight* v. *Bowyer* (1858), 2 De G. & J. 421, C. A.; *Ford* v. *Rackham* (1853), 17 Beav. 485; and see title RECEIVERS, p. 340, *ante*.

(*h*) *Cradock* v. *Scottish Provident Institution*, [1893] W. N. 146; affirmed [1894] W. N. 88, C. A.

(*i*) *Wollaston* v. *Wollaston* (1877), 7 Ch. D. 58 (where the annuity was

person entitled to the payment of an annuity under a covenant by the deceased has, it seems, the same right where the annuity is in arrear. If there are no arrears, he cannot himself have such a judgment, but if a judgment has been obtained by some other person as a creditor he is allowed to prove (*k*).

Right of legatee of perpetual annuity.

1028. According to the rules applied in an administration action, the legatee of a perpetual annuity is entitled to the best security to be obtained in Government stock (*l*), and, if paid in cash, he should receive such a sum as at the price of the day will purchase $2\frac{1}{2}$ per cent. Government stock sufficient to produce the annuity excluding brokerage (*m*).

Right of owner of life annuity charged on *corpus*.

The legatee of a life annuity charged upon *corpus* is not entitled as a matter of right to have the estate converted, but he is entitled to have such a security set apart to answer the annuity as will make it practically certain that the annuity will be paid (*n*); and, even against the opposition of the annuitant, the court, as a rule of practice, has jurisdiction to set apart such a security and pay the remainder of the residue to the residuary legatees (*o*). Where a fund has been set apart, the annuitant, it seems, has the right to resort, if necessary, to the capital of the fund (*p*). The appropriation of part of the assets does not in general release the rest of the estate (*q*); but frequently a will contains special directions for

also charged on real estate). As to administration by the court, see, generally, title EXECUTORS AND ADMINISTRATORS, Vol. XIV., pp. 333 *et seq.*

(*k*) *Re Hargreaves, Dicks* v. *Hare* (1890), 44 Ch. D. 236, C. A.; see *Read* v. *Blunt* (1832), 5 Sim. 567; *Norman* v. *Johnson* (1860), 29 Beav. 77; *Burrell* v. *Delevante* (1862), 30 Beav. 550; see also title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 338; and see p. 499, *ante*.

(*l*) *Hill* v. *Rattey* (1862), 2 John. & H. 634, 636; *Fryer* v. *Buttar* (1837), 8 Sim. 442; see *Charitable Donations and Bequests Commissioners* v. *St. Lawrence* (1846), 3 Jo. & Lat. 561 (where the interest on Government stock had been reduced); *Brown* v. *Tatnall* (1837), 6 L. J. (CH.) 371.

(*m*) *Hicks* v. *Ross*, [1891] 3 Ch. 499; see *Prendergast* v. *Prendergast* (1850), 3 H. L. Cas. 195; *Haggar* v. *Neatby* (1854), Kay, 379.

(*n*) *Re Parry, Scott* v. *Leak* (1889), 42 Ch. D. 570, 584; see *Re Potter, Potter* v. *Potter* (1883), 50 L. T. 8; *Webber* v. *Webber* (1823), 1 Sim. & St. 311; *King* v. *Malcott* (1852), 9 Hare, 692, 695. Where a testator directs his trustees to set apart as an annuity fund a particular investment, it seems that the statutory provisions as to trustees' investments (Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 1) do not enable the trustees to set apart a different investment although it is one authorised by the statute (*Re Owthwaite, Owthwaite* v. *Taylor*, [1891] 3 Ch. D. 494).

(*o*) *Harbin* v. *Masterman*, [1896] 1 Ch. 351, C. A.; see *Re Grant, Walker* v. *Martineau* (1883), 31 W. R. 703 (where the court refused to direct the purchase of Government annuities so as to release the rest of the estate for the benefit of the life tenant).

(*p*) *Harbin* v. *Masterman, supra*, at p. 362; see *Swallow* v. *Swallow* (1831), 1 Beav. 432, n. Where the fund is in court and the income is insufficient, a prospective order may be made for the sale from time to time of so much of the *corpus* as together with the income will be necessary to raise the successive instalments of the annuity (*Hodge* v. *Lewin* (1839), 1 Beav. 431).

(*q*) *Re Evans and Bettell's Contract*, [1910] 2 Ch. 438; *Re Parry, Scott* v. *Leak, supra*; see *Harbin* v. *Masterman, supra*, at p. 357; *Gordon* v. *Bowden* (1822), Madd. & G. 342.

SECT. 3. **Remedies for Recovering Annuities.**

setting apart a fund, under which that fund and nothing else is liable to the annuity (*r*).

Right of owner of life annuity charged on income.

The legatee of a life annuity charged on income only is entitled to have such a portion of the assets appropriated as will make it practically certain that the annuity will be paid by means of the income of that portion (*s*).

Contingencies.

1029. A contingent annuity may be provided for (*a*). Where an annuity is charged by will on a newspaper publication, the strict rules as to appropriation cannot be followed (*b*).

Right against interest of defaulting trustee.

1030. Where a fund set apart to meet an annuity is subsequently misappropriated by a trustee, the annuitant may be entitled to be reimbursed out of benefits given to the trustee by the will (*c*).

SUB-SECT. 2.—*Other Remedies.*

Other remedies of annuitant.

1031. Where the annuity is secured by a covenant the annuitant may of course bring an action on the covenant (*d*). He may also in a proper case obtain the appointment of a receiver (*e*). When the annuity is charged on land the annuitant is also, as against the land, able to avail himself of the remedies given by the Conveyancing and Law of Property Act, 1881 (*f*).

Part VIII. — Effect of the Statutes of Limitation upon the Rights of Rentchargers and Annuitants.

SECT. 1.—*Rentcharges and Annuities Not Secured by an Express Trust.*

SUB-SECT. 1.—*Rentcharges and Annuities Charged on Real Estate only or on Real and Personal Estate.*

The statutes applicable.

1032. The material Statutes of Limitation are the Real Property Limitation Act, 1833, and the Real Property Limitation Act, 1874 (*g*), which are to be construed together (*h*). The word "rent"

(*r*) *Re Owthwaite, Owthwaite* v. *Taylor*, [1891] 3 Ch. 494, 497, 498.

(*s*) *Harbin* v. *Masterman*, [1896] 1 Ch. 351, 356, C. A.; and see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 262.

(*a*) *Aaron* v. *Aaron* (1852), 9 Hare, 821.

(*b*) *Burton* v. *Jackson* (1856), 2 Jur. (N. S.), 224.

(*c*) *Morris* v *Livie* (1842), 1 Y. & C. Ch. Cas. 380; *Barnett* v. *Sheffield* (1852), 1 De G. M. & G. 371; and see title TRUSTS AND TRUSTEES.

(*d*) See the cases as to rentcharges cited in note (*a*), p. 517, and note (*e*), p. 518, *ante*.

(*e*) See title RECEIVERS, pp. 340, 365, 366, *ante*; and see p. 520, *ante*.

(*f*) 44 & 45 Vict. c. 41, s. 44; see pp. 514, 515, 517, *ante*.

(*g*) 3 & 4 Will. 4, c. 27; 37 & 38 Vict. c. 57; and see title LIMITATION OF ACTIONS, Vol. XIX., pp. 104 *et seq.*

(*h*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 9.

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in these statutes extends to all annuities and periodical sums of money charged upon or payable out of land (*i*), and the word "land" extends to all corporeal hereditaments (*k*). This definition of rent includes rentcharges granted by deed (*l*); annuities charged on land by will (*m*) or by deed (*n*); annuities charged on real and personal estate either by will (*o*) or by deed (*p*); and tithe rentcharges, as well, it would seem, where they belong to a spiritual corporation sole as where they belong to a lay person (*q*).

Time limit as regards extinguishment.

1033. Annuities such as those above-mentioned fall accordingly within the code of rules set forth in the Real Property Limitation Act, 1833 (*r*), and the Real Property Limitation Act, 1874 (*s*), as governing the recovery of rent (*t*). Where such an annuity remains unpaid for twelve years from the point when time commences to run (*a*), then, in the absence of acknowledgment, the title of the annuitant to the annuity, taken as a whole, is extinguished by the material provisions of the statutes (*b*). Such an annuity is to be considered and dealt with as one "rent" within the provisions (*c*) referred to, not as a series of "sums of money charged upon or payable out of land or rent" within the Real Property Limitation Act, 1874 (*d*), s. 8 (*e*). The extinguishment occurs even where the annuity is also secured by a personal covenant (*f*).

(*i*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 1; and see title LIMITATION OF ACTIONS, Vol. XIX., p. 106. The old Statutes of Limitation did not bar a legal rentcharge, and therefore did not in equity bar an equitable rentcharge (*Stackhouse* v. *Barnston* (1805), 10 Ves. 453, 467; *Charitable Donations and Bequests Commissioners* v. *Wybrants* (1845), 2 Jo. & Lat. 182, 195).

(*k*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 1; and see title LIMITATION OF ACTIONS, Vol. XIX., p. 106.

(*l*) *Jones* v. *Withers* (1896), 74 L. T. 572, C. A.

(*m*) *James* v. *Salter* (1837), 3 Bing. (N. C.) 544.

(*n*) *Hughes* v. *Coles* (1884), 27 Ch. D. 231.

(*o*) *Dower* v. *Dower* (1885), 15 L. R. Ir. 264.

(*p*) *Re Nugent's Trusts* (1885), 19 L. R. Ir. 140.

(*q*) *Irish Land Commission* v. *Grant* (1884), 10 App. Cas. 14; but a special period of limitation is provided in the case of rent belonging to a spiritual corporation sole; see title LIMITATION OF ACTIONS, Vol, XIX., p. 152.

(*r*) 3 & Will. 4, c. 27.

(*s*) 37 & 38 Vict. c. 57.

(*t*) For a full statement of these rules, see title LIMITATION OF ACTIONS, Vol. XIX., pp. 104 *et seq.*

(*a*) See p. 524, *post.*

(*b*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 1; Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 34; see *James* v. *Salter*, *supra*, at p. 553; approved in *Irish Land Commission* v. *Grant*, *supra*, at p. 27; *Hanks* v. *Palling* (1856), 6 E. & B. 659. The statutes do not apply in the case of an annuity charged on land in Jamaica (*Pitt* v. *Ducre* (*Lord*) (1876), 3 Ch. D. 295).

(*c*) See note (*b*), *supra.*

(*d*) 37 & 38 Vict. c. 57.

(*e*) See *Langton* v. *Langton* (1854), 18 Jur. 928; *Jones* v. *Withers*, *supra*; *Dower* v. *Dower*, *supra*, at p. 275; *Re Nugent's Trusts*, *supra*; *Re Drake's Estate*, [1909] 1 I. R. 136, 148, C. A.; see *Shaw* v. *Crompton*, [1910] 2 K. B. 370, *per* BRAY, J., at p. 379; and see title LIMITATION OF ACTIONS, Vol. XIX., pp. 82, 84, 98.

(*f*) *Shaw* v. *Crompton*, *supra.*

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Where the non-payment of such an annuity has not continued for the full period of twelve years, the title of the annuitant is not extinguished, but he cannot recover arrears for more than six years (*g*). The same limit applies, it would seem, even where the annuity is also secured by a personal covenant (*h*).

Time limit as regards recovery of arrears.

1034. As regards the point when time commences to run against the annuitant, the rule is that, in the case of an annuity of which no instalment has ever been paid, time runs from the date on which the right to recover the earliest instalment first accrued (*i*). But, in the case of an annuity of which an instalment has been paid and the receipt has been subsequently discontinued, time runs from the last payment (*k*).

When time commences to run.

Application of statutory provisions.

Provisions dealing generally with the time when the right to recover the annuity shall be deemed to have accrued (*l*), acknowledgments (*m*), disabilities (*n*), concurrent rights (*o*), estates tail (*p*), concealed fraud (*q*), and the rights of mortgagor and mortgagee (*r*), are contained in the Real Property Limitation Acts, 1833 and 1874 (*s*).

Effect of rule as to liability of every portion of estate charged.

1035. A rentcharge is entire and issues out of every portion of the land charged; and, if a rent charged on Blackacre and Whiteacre is for more than the statutory period paid by the occupier of Blackacre, Whiteacre during the whole of this period belonging to a separate owner who never pays the rent, the right to distrain on Whiteacre is not barred (*t*). Again, where for a long series of years a rentcharge is paid, not by the owner of the land really charged but by some other person, the court in some cases presumes a lost grant or agreement having the effect of preserving the rentcharger's rights against the land really charged (*u*).

(*g*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 42; see *Francis* v. *Grover* (1845), 5 Hare, 39; *Ferguson* v. *Livingston* (1846), 9 I. Eq. R. 202; *Re Nugent's Trusts* (1885), 19 L. R. Ir. 140; and see title LIMITATION OF ACTIONS, Vol. XIX., p. 99. In the case of tithe rentcharge in England, only two years' arrears can be recovered (Tithe Act, 1891 (54 & 55 Vict. c. 8), s. 10 (2)).

(*h*) *Thompson* v. *Hurly*, [1905] 1 I. R. 588, 595.

(*i*) *James* v. *Salter* (1837), 3 Bing. (N. C.) 544, 553.

(*k*) *Owen* v. *De Beauvoir* (1847), 16 M. & W. 547, 565.

(*l*) See title LIMITATION OF ACTIONS, Vol. XIX., pp. 110 *et seq.*

(*m*) See *ibid.*, pp. 131 *et seq.*; compare *ibid.*, pp. 58 *et seq.*

(*n*) See *ibid.*, pp. 133 *et seq.*

(*o*) See *ibid.*, pp. 130, 131.

(*p*) See *ibid.*, pp. 135, 137.

(*q*) See *ibid.*, pp. 143, 144.

(*r*) See *ibid.*, pp. 145 *et seq.*

(*s*) 3 & 4 Will. 4, c. 27; 37 & 38 Vict. c. 57. The statutory provisions apply to an annuity charged on land in favour of a charity; see title LIMITATION OF ACTIONS, Vol. XIX., p. 142, and the cases cited *ibid.*, note (*g*); and see *Re Montalt's (Earl) Estate*, [1909] 1 I. R. 390; title CHARITIES, Vol. IV., pp. 204 *et seq.*

(*t*) *Woodcock* v. *Titterton* (1864), 12 W. R. 865; *Dublin (Archbishop)* v. *Trimleston (Lord)* (1849), 12 I. Eq. R. 251.

(*u*) *Adnam* v. *Sandwich (Earl)* (1877), 2 Q. B. D. 485, 490; compare *Bomford* v. *Neville*, [1904] 1 I. R. 474; *Foley's Charity Trustees* v. *Dudley Corporation*, [1910] 1 K. B. 317, C. A. In *Adnam* v. *Sandwich (Earl)*, *supra*, the preservation of the rentcharger's rights against the land was based alternatively on his ignorance, having regard to which it was said that the

SUB-SECT. 2.—*Annuities Charged upon or Payable out of Personal Estate only.*

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1036. An annuity charged upon or payable out of personal estate only, where given by will, should, it seems, be treated as a series of "legacies" within the Real Property Limitation Act, 1874 (*v*), s. 8, payable *de anno in annum* (*w*). In this view, non-payment of the annuity for twelve years does not extinguish the title of the annuitant (*a*); but each instalment must be considered separately, having regard to the time at which a present right to receive the same accrued; and, in the absence of acknowledgment or part payment, the right to recover such an instalment is barred where twelve years have elapsed from the time at which such present right accrued (*b*).

Non-payment for twelve years does not extinguish title.

1037. An annuity payable out of personal estate only is neither "rent" nor "interest in respect of a legacy" within the Real Property Limitation Act, 1833 (*c*), s. 42, which limits arrears to six years (*d*). It seems accordingly that, where the gift is by will, arrears for a period not exceeding twelve years can be recovered (*e*).

Arrears recoverable.

1038. In the case of an annuity secured by covenant or other specialty and not charged on real estate, an instalment can be recovered within twenty years after the cause of action arose (*f*) or after an acknowledgment or part payment (*g*).

Annuity secured by covenant.

Annuities secured on real estate.

SECT. 2.—*Rentcharges and Annuities Secured by an Express Trust.*

1039. An annuity charged upon or payable out of real estate only or out of real and personal estate, and secured by an express trust, should, it seems, be considered as a whole and dealt with as one rent within the Real Property Limitation Act, 1874 (*h*), s. 1, and the Real Property Limitation Act, 1833 (*i*), s. 25 (*j*). In this

When time commences to run.

court could not hold him guilty of any default; see *Irish Commission* v. *White*, [1896] 2 I. R. 410. But this doctrine seems doubtful, ignorance not preventing the operation of the statute (*Dawkins* v. *Penrhyn* (*Lord*) (1877), 6 Ch. D. 318, 324, C. A.; *Rains* v. *Buxton* (1880), 14 Ch. D. 537).

(*v*) 37 & 38 Vict. c. 57.

(*w*) *Dower* v. *Dower* (1885), 15 L. R. Ir. 264, 273; compare *Edwards* v. *Warden* (1874), 9 Ch. App. 495, 504; (1876), 1 App. Cas. 281 (an annuity payable under the regulations of a civil service fund); and see titles EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 264; LIMITATION OF ACTIONS, Vol. XIX., p. 85.

(*a*) See, *contra*, *Re Ashwell's Will* (1859), John. 112, 117.

(*b*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.

(*c*) 3 & 4 Will. 4, c. 27; and see title LIMITATION OF ACTIONS, Vol. XIX., pp. 97 *et seq.*

(*d*) *Roch* v. *Callen* (1848), 6 Hare, 531, 536; *Re Ashwell's Will*, *supra*, at p. 116.

(*e*) *Ibid.*; compare *Edwards* v. *Warden* (1874), 9 Ch. App. 495, 504; (1876) 1 App. Cas. 281.

(*f*) Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42), s. 3; see *Amott* v. *Holden* (1852), 18 Q. B. 593; and see title LIMITATION OF ACTIONS, Vol. XIX., pp. 77, 99, note (*t*).

(*g*) Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42), s. 5.

(*h*) 37 & 38 Vict. c. 57.

(*i*) 3 & 4 Will. 4, c. 27.

(*j*) *Dower* v. *Dower*, *supra*, at p. 273; *Re Nugent's Trusts* (1885), 19 L. R. Ir. 140; *Shaw* v. *Crompton*, [1910] 2 K. B. 370, 379;

SECT. 2. Rentcharges and Annuities Secured by an Express Trust.

view, where the annuity remains unpaid, time does not commence to run, so far as the real estate is concerned, against the annuitant's right to recover unless and until the trustee conveys to a purchaser for value (*k*). If there is such a conveyance, time thereupon commences to run, but only in favour of the purchaser for value and any person claiming through him (*l*); it will, however, so run even where the purchaser has notice of the trust (*m*). Time does not run in favour of a person who takes a conveyance not for value (*n*). The rule as to the running of time applies in the case of any annual payment which can be strictly described as a rentcharge (*o*).

Arrears.

As regards arrears, the right of the annuitant is limited to six years (*p*).

Annuities on personal estate only.

1040. In the case of annuities charged upon or payable out of personal estate only, an express trust of the personal estate prevents the lapse of time from barring the right to the annuity or limiting the arrears (*q*).

Laches.

1041. Where an annuity is secured by an express trust, the annuitant is not precluded from recovering proper arrears merely by neglecting for a considerable time to enforce punctual payments (*r*).

Re Drake's Estate, [1909] 1 I. R. 136, C. A. This view seems preferable to the other view suggested by KAY, J., in *Hughes* v. *Coles* (1884), 27 Ch. D. 231, 235, that such an annuity should be considered as a series of sums of money charged upon or payable out of land or rent within the Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 10; see also title LIMITATION OF ACTIONS, Vol. XIX., p. 141, where the question as to what is an express trust for this purpose is dealt with.

(*k*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 25; *Knight* v. *Bowyer* (1858), 2 De G. & J. 421, C. A. After a number of years the annuity may be presumed to have been satisfied (*Shadbolt* v. *Vanderplank* (1861), 29 Beav. 405; see *Carter* v. *Anderson* (1830), 3 Sim. 370; *Smallman* v. *Hamilton* (1760), 2 Atk. 71; *Wynn* v. *Williams* (1799), 5 Ves. 130; *Pitt* v. *Dacre* (*Lord*) (1876), 3 Ch. D. 295).

(*l*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 25; see, further, title LIMITATION OF ACTIONS, Vol. XIX., pp. 140, 141; and, as to when the right of action against the trustee himself is barred, see *ibid.*, p. 161.

(*m*) *St. Mary Magdalen College, Oxford* (*President etc.*) v. *A.-G.* (1857), 6 H. L. Cas. 189, 216.

(*n*) *Burroughs* v. *M'Creight* (1844), 1 Jo. & Lat. 290, 304.

(*o*) See p. 523, *ante*.

(*p*) See Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 42; Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 10; title LIMITATION OF ACTIONS, Vol. XIX., p. 103. As to when the right of action against the trustee is barred, see *ibid.*, pp. 161 *et seq.*

(*q*) *Playfair* v. *Cooper*, *Prince* v. *Cooper* (1853), 17 Beav. 187; Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (2); and see title LIMITATION OF ACTIONS, Vol. XIX., pp. 85, 103.

(*r*) *Re Rix*, *Rix* v. *Rix* (1912), 56 Sol. Jo. 573.

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Part I.—Authorities Controlling the Revenue.

SECT. 1. The Crown.

SECT. 1.—*The Crown.*

Origin of control.

1042. The control over the public revenue exercised by the Crown owes its origin to the historic character of the revenue as being money at the disposal of the Sovereign, derived either from his possessions, prerogative rights and privileges, or from aids granted by the Commons.

Crown revenues.

1043. Revenues of the former class are now customarily surrendered by the Sovereign on his accession (*a*), and such rights as are preserved to the Crown in respect of them have no appreciable effect upon the revenue (*b*).

Crown's requirements.

1044. On the other hand, in respect of the aids granted by the Commons and of expenditure from the public revenue, the requirements of the Crown still provide the reason for, and so implicitly fix the limits of, the grant and the expenditure; and no petition for any sum relating to the public service, or motion for a grant or charge upon the public revenue, can be received in the House of Commons unless recommended by the Crown, or made by way of an address to the Crown (*c*).

Control by executive Government.

The necessary recommendation is conveyed by the constitutional advisers (*d*) of the Crown, so that the control assured is in effect a control by the executive Government, and prevents the introduction of independent proposals for increasing existing taxes, or for creating new charges upon the revenue otherwise than by an address to the Crown (*e*).

Finally, a Royal Order under the Sign Manual is necessary to authorise the Treasury to issue any sum out of the credits granted to it on the Exchequer accounts for the supply services (*f*).

(*a*) See Civil List Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 28); and title CONSTITUTIONAL LAW, Vol. VII., pp. 108 *et seq.*

(*b*) *Ibid.*, pp. 111, 128 (legal right of succeeding Sovereign to resume the surrendered revenues); p. 130 (release of debts in respect of Crown lands under the Crown Lands Act, 1853 (16 & 17 Vict. c. 56), s. 5); and see Remission of Penalties Act, 1859 (22 Vict. c. 32), s. 1; and Remission of Penalties Act, 1875 (38 & 39 Vict. c. 80), s. 1.

(*c*) Standing Orders of the House of Commons (Public Business), 1911, Nos. 66, 70; see title PARLIAMENT, Vol. XXI., pp. 766 *et seq.* As to the expenditure of the revenue, see pp. 744 *et seq.*, *post.*

(*d*) As to the relations between the Crown and the Ministry, see title CONSTITUTIONAL LAW, Vol. VI., pp. 386, 387; Vol. VII., p. 5.

(*e*) See title PARLIAMENT, Vol. XXI., p. 766; Parliamentary Debates, 3rd series, Vol. 191, p. 1878 (amendment varying incidence of taxation refused); *ibid.*, Vol. 174, p. 1922 (address to the Crown).

(*f*) Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), s. 14; see title CONSTITUTIONAL LAW, Vol. VII., p. 9. As to the distinction between Consolidated Fund services and supply services, see note (*q*), p. 538, *post*; and see pp. 744 *et seq.*, 748 *et seq.*, *post.*

SECT. 2.—*Parliament.*

SECT. 2. Parliament.

1045. Parliamentary control over the revenue is threefold in its nature. It is exercised in respect of (1) the raising of the revenue, (2) the expenditure, (3) the auditing of the accounts.

Threefold control.

1046. Of these forms of control, the first is the oldest (*g*) and the most effective. The greater part of the revenue, that raised by taxation, can be collected only as the result, or in anticipation (*h*), of specific enactments. As regards other sources, the powers of the various departments which contribute towards the revenue (*i*) are conferred upon them mainly by statutory authority, and exercised subject to the responsibility of the heads of the several departments to Parliament (*k*). Only a few miscellaneous sources of revenue are by their inherent character independent of parliamentary control (*l*).

In respect of raising of revenue.

1047. Except in the case of certain payments out of the gross receipts of the Post Office (*m*), Telegraph Service (*n*), and the Departments of Woods, Forests, and Land Revenues (*o*), parliamentary sanction is required to legalise any expenditure out of the public revenue (*p*).

In respect of expenditure.

(*g*) See title CONSTITUTIONAL LAW, Vol. VI., p. 377.

(*h*) *Ibid.*, pp. 379, 380. As a necessary precaution against evasion, the collection of many of the taxes and duties imposed by the annual Finance Acts commences as soon as the necessary resolutions have been passed by the House of Commons. The legality of this anticipation of statutory authority, which was the subject of discussion in the House of Commons when the Finance Bill of 1909 had been rejected by the House of Lords (Parliamentary Debates, 5th series, Vol. 14, pp. 885 *et seq.*), has at length been raised in *Bowles* v. *Bank of England* (1912), 29 T. L. R. 42, where it was held that the deduction by the Bank of England of income tax from a dividend on stock before the Act imposing such tax had been passed, although after the passing of a resolution of the Committee of Ways and Means (see title PARLIAMENT, Vol. XXI., p. 774), was unlawful.

(*i*) The most important of these departments are the Commissioners of Woods, Forests and Land Revenues (see title CONSTITUTIONAL LAW, Vol. VII., p. 122) and the Post Office (see title POST OFFICE, Vol. XXII., pp. 625 *et seq.*). Other departments, though not primarily productive of revenue, receive in the course of their general administration considerable sums, which are either paid into the Exchequer accounts (see Finance Accounts of the United Kingdom, 1910-1911, Parliamentary (House of Commons) Paper No. 201 of 1911), or used as appropriations in aid; see note (*p*), *infra.*

(*k*) See title CONSTITUTIONAL LAW, Vol. VI., p. 382.

(*l*) *E.g.*, conscience money.

(*m*) Payments to railway companies etc. for parcel post, and payments of postage collected for colonial and foreign countries; see Parliamentary (House of Commons) Paper No. 223 of 1905; and see title POST OFFICE, Vol. XXII., p. 633.

(*n*) Parliamentary (House of Commons) Paper, No. 223 of 1905 (payments to cable companies).

(*o*) *Ibid.* (charges for collection and payments for surveys, repairs etc.); see also title CONSTITUTIONAL LAW, Vol. VII., p. 130.

(*p*) See pp. 538—540, *post;* and see title PARLIAMENT, Vol. XXI., p. 766. The system of "appropriations in aid" by which miscellaneous receipts of various departments are directly spent by them appears at first sight to be an exception to the proposition in the text, *supra.* Since, however, the whole expenditure of any department is set out in the estimates upon which Parliament votes the supplies, and the amount of receipts to be appropriated is fixed by the Appropriation Act, the only effect of the system is to diminish *pro tanto* the grants out of the Exchequer, and the control

SECT. 2. Parliament.

Statutory sanction.

This sanction is given by Acts of Parliament, which are either permanent or annual (*q*). The latter consist of several Consolidated Fund Acts (*r*), and at least one Appropriation Act (*s*), embodying the resolutions of the House of Commons passed after consideration of the expenditure in detail, the different items being grouped together into a number of "votes" (*t*).

Adjustment of supply.

With the consent of the Treasury, supplies granted under one sub-head of a vote may be utilised for expenditure under another sub-head of the same vote, and, in the case of the Army and Navy, transfer from one vote to another is temporarily allowed in anticipation of the sanction to be given by a subsequent Appropriation Act (*a*).

Supervision and audit of accounts.

1048. To enable the House of Commons to ascertain whether its directions as to how the revenue is to be raised and spent are

by Parliament remains unimpaired; see Public Accounts and Charges Act, 1891 (54 & 55 Vict. c. 24), s. 2; Appropriation Act, 1911 (1 & 2 Geo. 5, c. 15); and Parliamentary (House of Commons) Paper No. 387 of 1902, pp. 58, 223; and see title PARLIAMENT, Vol. XXII., pp. 768, 769.

(*q*) Although, in either case, the expenditure is met principally out of the Consolidated Fund, the services are distinguished, according as the provision is permanent or annual, by the titles "Consolidated Fund Services" and "Supply Services." The security that the charges in respect of the former class will be met unless Parliament actively intervenes is recognised as conferring a certain independence. For example, the provision for the charges for the National Debt (see pp. 753 *et seq.*, *post*) and the salaries of the judges and the Comptroller and Auditor-General is permanent; see preamble to the Public Revenue and Consolidated Fund Charges Act, 1854 (17 & 18 Vict. c. 94); and see title PARLIAMENT, Vol. XXI., p. 768, *post*.

(*r*) As any balance in the hands of a department must be surrendered at the end of the financial year (31st March), by which time consideration of the estimates is never concluded, such Acts are passed from time to time to make provision for current expenditure; see title PARLIAMENT, Vol. XXI., pp. 769, 775.

(*s*) See Appropriation Act, 1911 (1 & 2 Geo. 5, c. 15); and see title PARLIAMENT, VOL. XXI., p. 775.

(*t*) The control over expenditure is of comparatively recent origin. Prior to the Revolution of 1688 the ordinary revenues of the Crown were left at the absolute disposal of the Sovereign, and only in a few cases was any attempt made to secure that even extraordinary grants should be expended upon the objects for which they were voted. After the revolution, annual votes for the Army, Navy, and Ordnance services, and occasional votes for civil purposes, were introduced, but the restrictions so imposed were evaded by the practice of spending large sums on Army and Navy "Extraordinaries," for which sanction was not obtained until the next session. Further, as the whole expenditure on the Army was divided into only two or three votes, while that of the Navy was, until 1798, included in a single vote, the freedom left to the departments to appropriate the grant to any purposes within the vote went far to impair the efficiency of the control; see Parliamentary (House of Commons) Paper No. 387 of 1902, p. 228. As to parliamentary control of public money generally, see title PARLIAMENT, Vol. XXI., pp. 792 *et seq.*

(*a*) Such transfer is authorised annually by the Appropriation Act; see Appropriation Act, 1911 (1 & 2 Geo. 5, c. 15). In accordance with a resolution of the House of Commons (4th and 5th March, 1879), a statement of each case where such a transfer is sanctioned, and of the representations made by the department to the Treasury, must be laid before Parliament within three weeks after the sanction has been given, or, if Parliament is not then sitting, within three weeks of its next meeting; and see, further, title PARLIAMENT, Vol. XXI., p. 770.

carried out, statutory provision is made for presenting, by specified dates, accounts of the receipts and issues from the Exchequer, and also audited accounts, showing the appropriation of the supplies granted, together with reports by the Comptroller and Auditor-General thereon (*b*).

These accounts and reports are referred to, and considered by, a committee of the House of Commons (*c*), which reports to the House from time to time, and recommends, when necessary, that expenditure which has been incurred in excess of that voted should be sanctioned by excess grants, and comments upon any transfer from one vote to another in the case of the Army and Navy (*d*).

SECT. 3.—*The Treasury.*

Origin of control.

1049. The control exercised by the Treasury (*e*) derives its sanction partly from the fact that the Treasury is the department through which the executive Government acts in relation to questions affecting the revenue, and partly from specific enactment.

Thus, the Treasury is the department charged with the preparation of the annual budget, and its authority is secured by the

(*b*) It is important to distinguish between the control which consists in determining in anticipation how the revenue is to be spent, and therefore ends with the act of voting, and that which is exercised over those who actually expend the grants, by the knowledge that accounts will have to be submitted and will be carefully scrutinised. It is only in recent times that Parliament has sought to obtain this latter form of control. Accounts of receipts from certain sources were required by certain taxing Acts at an early stage (*e.g.*, stat. (1688) 1 Will. & Mar. c. 20, s. 38), statements of the gross and net produce of the revenue in 1787 (stat. (1787) 27 Geo. 3, c. 13, s. 72), and of the issues from the Exchequer in 1801 (stat. (1802) 42 Geo. 3, c. 70, s. 4); and for provisions now in force, see Public Revenue and Consolidated Fund Charges Act, 1854 (17 & 18 Vict. c. 94), s. 2; Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), s. 16. But no accounts showing audited expenditure were presented to Parliament until 1831, when appropriation accounts of the naval expenditure were required by the Admiralty Act, 1832 (2 & 3 Will. 4, c. 40), s. 30. The system was extended to the Army in 1847 (stat. (1846) 9 & 10 Vict. c. 92, s. 7), to the votes for the revenue departments in 1861 (stat. (1861), 24 & 25 Vict. c. 93), and, finally, to every head of public expenditure by the Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), ss. 21—31; see p. 541, *post*; and see Return of Public Income and Expenditure, Parliamentary Paper No. 366 of 1869, pp. 326 *et seq.*

(*c*) *I.e.*, the Committee of Public Accounts, Standing Orders of the House of Commons (Public Business), 1911 (No. 75), and see title PARLIAMENT, Vol. XXI., pp. 684, 777. A day is usually provided for consideration by the House of the reports of the Committee and the recommendations embodied therein. An insight into the work and value of the Committee may be obtained from the report and evidence given before a select committee which sat in 1902 and 1903, in which it is stated that "as a check not merely upon extravagant or unauthorised expenditure, but also upon unwise methods of management the Committee is probably more effectual than the House of Commons itself"; see Parliamentary (House of Commons) Papers, Nos. 387 of 1902 and 242 of 1903.

(*d*) See, for example, First and Second Reports of the Committee for 1910, Parliamentary (House of Commons) Papers, Nos. 71 and 125 of 1910.

(*e*) For a description of the Treasury, see title CONSTITUTIONAL LAW, Vol. VII., pp. 100 *et seq.*

SECT. 3. The Treasury.

necessity for the recommendation of the Crown before the introduction of financial proposals into the House of Commons (*f*). In the case of all departments charged with the expenditure of public moneys, details of the estimates, the approximate totals of which have previously been determined by the Chancellor of the Exchequer in consultation with the heads of the departments and the Cabinet, are drawn up in the departments concerned. For the Civil Service estimates the Treasury is directly responsible; the other estimates must be submitted to the Treasury, where they are closely examined before their introduction to the House of Commons is sanctioned. The power of refusing this sanction enables the Treasury to impose upon the departments rules as to the practice to be followed, particularly with reference to the submission to the Treasury of proposals involving financial liability (*g*).

Statutory control.

1050. On the other hand, the control over the actual receipt and issue of public money is secured by Act of Parliament. The Royal Order directing issues for the supply services must be countersigned by the Treasury, and the requisitions upon the Comptroller and Auditor-General, and orders to the banks for issues from the Consolidated Fund are made by the Treasury (*h*). The management of the Customs and Excise and Inland Revenue departments and certain powers in respect of other departments contributing to or spending from the revenue are also conferred upon the Treasury (*i*), and, in general, when Parliament entrusts to some other authority subsidiary powers, the exercise of which will affect the revenue, it is customary to insert provisions requiring the sanction of the Treasury (*k*).

(*f*) See p. 536, *ante*. As to the budget, see title PARLIAMENT, Vol. XXI., pp. 774, 775.

(*g*) *E.g.*, the creation of new civil situations, the commencement of new works, the purchase of lands or premises, services executed jointly with the colonies, contributions towards the cost of works executed by public bodies or private individuals, the discharge of a loss, deficiency or over-issue beyond certain limits, the granting of an increased price under a formal contract, compensation to a contractor for departure from the terms of a contract, abandonment of claims in respect of purchases in default, rewards to inventors, gifts of public property etc.; see, generally, Parliamentary (House of Commons) Paper, No. 387 of 1902, pp. 103, 121, 135, 197; and, as to the control of the Treasury with regard to estimates, see, further, title PARLIAMENT, Vol. XXI., pp. 768, 769. As to the expenditure of the revenue, see pp. 744 *et seq.*, *post*.

(*h*) Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), ss. 13, 14, 15. For forms of the Royal Order, Treasury requisitions and orders on the banks, see Anson, Law and Custom of the Constitution, 3rd ed., Part II., Appendix 3. As to the Comptroller and Auditor-General, see p. 541, *post*.

(*i*) *E.g.*, Consolidated Fund Act, 1816 (56 Geo. 3, c. 98), s. 2; Public Revenue (Scotland) Act, 1833 (3 & 4 Will. 4, c. 13), s. 1, and Acts therein recited; Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 1 (as to Customs and Excise, and Inland Revenue); Crown Lands Act, 1851 (14 & 15 Vict. c. 42), ss. 32 *et seq.* (as to Commissioners of Woods and Commissioners of Works); Post Office Act, 1908 (8 Edw. 7, c. 48) (as to the Post Office).

(*k*) *E.g.*, Appropriation Act, 1911 (1 & 2 Geo. 5, c. 15), s. 4 (in respect of the transfer from one vote to another of money voted for the Army and Navy); Judicature Act, 1875 (38 & 39 Vict. c. 77), ss. 24, 26 (as to rules

Finally, when the money has been received and the expenses met, the preparation of the accounts and their submission to the Comptroller and Auditor-General are made subject to Treasury direction, and to the Treasury is entrusted the final decision as to the passing of accounts of the accounting officers and the collection and recovery of unexpended balances (*l*).

SECT. 4.—*The Exchequer and Audit Department.*

Controlling functions.

1051. The function of the Exchequer and Audit Department is two-fold. It includes, firstly, the superintendence of the receipts and issues of public moneys, and, secondly, the examination on behalf of Parliament of various accounts, and especially the accounts of all supply grants, for the purpose of reporting thereon to the House of Commons. In the performance of the latter duty it is independent of all public departments, including the Treasury.

Comptroller and Auditor-General.

1052. The head of the department, the Comptroller and Auditor-General, and also the Assistant Comptroller and Auditor-General, are appointed by letters patent under the Great Seal, in which provision is made for their salaries and pensions to be charged upon the Consolidated Fund. They hold office during good behaviour, subject to removal by the Crown on an address by both Houses of Parliament (*m*).

Staff

The staff of the department is appointed and regulated by the Treasury, but the power to promote, suspend, or remove is vested in the Comptroller and Auditor-General (*n*).

Duties with regard to Exchequer account at the Banks of England and Ireland.

1053. All public moneys payable into the Exchequer, that is to say, the whole of the receipts of public revenue, with the exception of certain drawbacks, refunds, repayments, sums intercepted in the hands of the departments which receive them, and the proceeds of certain local taxation licences, are paid into the Exchequer account at the Banks of England and Ireland, to form a single fund (*o*). Out

and regulations for the practice of the High Court, dealing with moneys paid into court, fixing and collection of fees etc.).

(*l*) Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39); and see pp. 543, 765, *post*.

(*m*) Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), ss. 3—7. Tenure of these offices debars the holders from accepting offices held during pleasure under the Crown or an officer of the Crown, and from membership of either House of Parliament; and see title PARLIAMENT, Vol. XXI., p. 661, note (*m*).

(*n*) Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), ss. 8, 9.

(*o*) Consolidated Fund Act, 1816 (56 Geo. 3, c. 98), s. 1 (as to all public moneys directed to be carried to or form part of the Consolidated Funds of Great Britain and Ireland respectively prior to 1817); Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), ss. 10, 11 (as to Customs, Inland Revenue and Post Office); Finance Act, 1907 (7 Edw. 7, c. 13), s. 17, as amended by Finance Act, 1908 (8 Edw. 7, c. 16), s. 6, and Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 87—89 (as to receipts from local taxation); Civil List Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 28); Crown Revenues (Colonies) Act, 1852 (15 & 16 Vict. c. 39); Crown Lands Act, 1829 (10 Geo. 4, c. 50), ss. 113, 114; Crown Lands Act, 1851 (14 & 15 Vict. c. 42), s. 25; Crown Lands Act, 1866 (29 & 30 Vict. c. 62), s. 12; Crown Lands (Scotland) Act, 1833 (3 & 4 Will. 4, c. 69), s. 16; and Treasury Solicitor Act,

SECT. 4. The Exchequer and Audit Department.

of this fund, upon requisition by the Treasury, the Comptroller and Auditor-General, if satisfied with the correctness of the requisition, grants credits to the Treasury, and the Treasury makes issues therefrom to meet the public expenditure (*p*).

Daily accounts of the receipts and issues are furnished to the Comptroller and Auditor-General, and quarterly accounts of the income and charges on the Consolidated Fund, and of the public income and expenditure. If the income is insufficient to meet the charges, the Comptroller and Auditor-General authorises the Banks of England and Ireland to make advances of the necessary amounts (*q*).

Authority to Banks to make advances.

Examination of and report upon public accounts.

1054. It is the duty of the Comptroller and Auditor-General to examine, and report to the House of Commons upon, (1) all appropriation accounts, that is, accounts of supply grants, which are prepared by certain dates (*r*) and in a prescribed form (*s*) by such departments or officers charged with the expenditure of those grants as the Treasury may appoint (*t*); (2) the account of the Consolidated Fund services prepared by the Treasury (*a*); and (3) certain other accounts in respect of which such examination is prescribed by special enactment (*b*).

Duties with regard to audit of accounts and examination of vouchers.

1055. By means of such examination, it is the duty of the Comptroller and Auditor-General to ascertain and call attention to every case in which it appears to him that (1) a grant has been exceeded; (2) money received by a department from other sources than the grants for the year to which the account relates has not been applied or accounted for according to the directions of Parliament; (3) a sum charged against a grant is not supported by proof of payment; or (4) a payment so charged did not occur within the period of the account or was for any other reason not properly chargeable

1876 (39 & 40 Vict. c. 18), s. 4 (as to hereditary and land revenues of the Crown); Coinage Act, 1870 (33 & 34 Vict. c. 10), s. 10 (as to sums received by the Mint); Public Revenue and Consolidated Fund Charges Act, 1854 (17 & 18 Vict. c. 94), s. 7; Exchequer Extra Receipts Act, 1868 (31 & 32 Vict. c. 9); Finance Act, 1894 (57 & 58 Vict. c. 30), s. 41; Merchant Shipping (Mercantile Marine Fund) Act, 1898 (61 & 62 Vict. c. 44), ss. 1, 3; Queen's Prison Act, 1842 (5 & 6 Vict. c. 22), s. 5; and Court of Chancery (Ireland) Act, 1823 (4 Geo. 4, c. 61), s. 59 (as to certain fees and casual receipts); Treasury Bills Act, 1877 (40 & 41 Vict. c. 2), s. 5 (as to money raised by Treasury bills).

(*p*) Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), ss. 13, 15; and see p. 747, *post*.

(*q*) Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), s. 12.

(*r*) *Ibid.*, Sched. A.

(*s*) *Ibid.*, ss. 23, 24; Order in Council, 16th January, 1873.

(*t*) Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), s. 22.

(*a*) *Ibid.*, s. 21.

(*b*) Chelsea Hospital Act, 1876 (39 & 40 Vict. c. 14), s. 1; Sinking Fund Act, 1875 (38 & 39 Vict. c. 45), ss. 4, 7 (accounts of the National Debt Commissioners); Army and Navy Audit Act, 1889 (52 & 53 Vict. c. 31), s. 1 (shipbuilding and manufacturing services of the Army and Navy); Development and Road Improvement Funds Act, 1909 (9 Edw. 7, c. 47), s. 2 (accounts of the Commissioners).

against the grant (*c*). He is also at liberty to, and in practice does, report generally upon questions of the expenditure and accounts of the departments and decisions of the Treasury in respect to such matters, although the detection of extravagant, as distinguished from unauthorised, expenditure is not one of the duties which he is enjoined by statute to perform (*d*). With reference to certain accounts, the Treasury can require the Comptroller and Auditor-General to make such a detailed examination of the vouchers as the Treasury may prescribe (*e*).

Powers with regard to books and returns.

For the purposes of his examinations, the Comptroller and Auditor-General has access to all books of accounts and other documents relating to the accounts, and may require the departments to furnish him with balance sheets and periodical returns of all cash transactions (*f*).

Other accounts which may be examined.

1056. In addition to the accounts above mentioned, the examination of which is obligatory, the Comptroller and Auditor-General may be required by the Treasury to examine other accounts, namely, those of principal accountants, receivers of money payable to the Exchequer, store and other accounts, and to report upon them to the Treasury (*g*).

Part II.—Authorities Collecting the Revenue.

SECT. 1.—*In General.*

1057. The greater part (*h*) of the revenue is collected by the Commissioners of Inland Revenue (*i*) and the Commissioners of

(*c*) Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), ss. 27, 32.

(*d*) Evidence of Mr. Richmond, C.B., Parliamentary (House of Commons) Paper No. 387 of 1902, p. 50. Decisions of the Treasury upon objections by the Comptroller under the Exchequer and Audit Departments Acts, 1866 (29 & 30 Vict. c. 39), s. 31, are matters to which he may call attention.

(*e*) Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), s. 29, Sched. B. In addition to the accounts specifically mentioned in *ibid.*, Sched. B, namely, the Army and Navy, the appropriation accounts of the Customs, Inland Revenue and Post Office have been added by Treasury Minute dated 27th March, 1899, laid before both Houses of Parliament.

(*f*) Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), ss. 25, 28.

(*g*) *Ibid.*, ss. 33—34; and see, *e.g.*, title POST OFFICE, Vol. XXII., p. 634. As to accounts of principal accountants, see p. 765, *post*.

(*h*) The dividends paid upon the shares held by the British Government in the Suez Canal Company (as to which see p. 547, *post*) are paid direct into the Exchequer Account at the Bank of England (Finance Act, 1894 (57 & 58 Vict. c. 30), s. 40 (1)). This applies also to the revenue derived from the miscellaneous sources (see p. 547, *post*), the net proceeds of which are paid in to the Bank of England after provision has been made for payment, out of the gross sums collected, of any moneys charged on them by Parliament (Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), s. 10).

(*i*) See p. 544, *post*.

SECT. 1. In General.

Customs and Excise (*j*), and most of the remainder by the Postmaster-General (*k*), the Land Tax Commissioners (*l*), and the Commissioners of Woods and Forests (*m*).

SECT. 2.—*The Commissioners of Inland Revenue.*

The Commissioners and their general powers.

1058. The Commissioners of Inland Revenue are a body appointed by letters patent to collect and cause to be collected all duties of inland revenue, and have their chief office at Somerset House, London. They hold their appointments at the will of the Crown, and are entrusted with all the powers necessary to carry into execution every Act relating to inland revenue, but in the exercise of these powers they are subject to the authority, direction, and control of the Treasury (*n*). All minutes, orders, and notices made by them can be proved by a copy purporting to be signed by a secretary or assistant secretary by their order (*o*).

Powers with regard to legal proceedings.

1059. Legal proceedings against any person for the recovery of any fine, penalty, or forfeiture under any Act relating to inland revenue can only be commenced by the order of the Commissioners and in the name of an officer, or in the name of the Attorney-General (*p*). They may mitigate fines or penalties incurred under any Act relating to inland revenue, and stay proceedings for such fines or penalties, and may after judgment remit any fine, or order any person imprisoned for any offence against inland revenue to be discharged before his term of imprisonment has expired (*q*). Any fine, penalty, or forfeiture which is incurred under any Act relating to inland revenue, and which is not otherwise legally appropriated, is payable to the Commissioners to the use of His Majesty (*r*).

SECT. 3.—*The Commissioners of Customs and Excise.*

The Commissioners and their general functions.

1060. The Commissioners of Customs and Excise (*s*) are a body appointed by letters patent for the purpose of the collection and management of the duties of customs and excise, and of all

(*j*) See the text, *infra*.
(*k*) See titles CONSTITUTIONAL LAW, Vol. VII., p. 105; POST OFFICE, Vol. XXII., pp. 628 *et seq.*
(*l*) See title LAND TAX, Vol. XVIII., pp. 313 *et seq.*
(*m*) See title CONSTITUTIONAL LAW, Vol. VII., p. 122.
(*n*) Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 1. As to the general powers vested in the Treasury of ordering and controlling all officers and other persons concerned or employed in the collection or management of the revenue, see Consolidated Fund Act, 1816 (56 Geo. 3, c. 98), s. 2. As to the penalty for furnishing false statements and returns, see pp. 546, 547, *post*.
(*o*) Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 24.
(*p*) *Ibid.*, s. 21. As to the penalty for unlawfully assuming the character of an Inland Revenue officer, see p. 547, *post*.
(*q*) Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 35 (1).
(*r*) *A.-G.* v. *Exeter Corporation*, [1911] 1 K. B. 1092.
(*s*) By Order in Council dated 15th February, 1909 (see *London Gazette*, 1909, 16th February, p. 1212), made pursuant to the Finance Act, 1908 (8 Edw. 7, c. 16), s. 4, the management of the Excise department of Inland Revenue was transferred to the Commissioners of Customs, now known as the "Commissioners of Customs and Excise."

drawbacks and allowances (*t*) payable upon dutiable goods, and have their chief office at the Custom House, Lower Thames Street, London (*u*).

They hold their appointments at the will of the Crown, and perform their functions subject to the direction and control of the Treasury (*x*). They appoint officers for the collection of the duties of customs and excise (*a*). All minutes, orders, and notices made by them can be proved by a copy purporting to be signed by a secretary or assistant secretary by their order (*b*).

Appointment.

1061. The Commissioners have all the powers necessary for putting in force any Act of Parliament relating to the duties under their control. They may make regulations for the prevention of smuggling, may order proceedings for the recovery of any penalty incurred in connection with any Act imposing a duty of customs or excise, may remit or mitigate any fine or penalty or restore any goods seized, and may reward any person instrumental in detaining smugglers, securing the conviction of offenders, or making seizures (*c*). They have power to hold inquiries upon oath into any matters of dispute which may arise in respect of the duties managed by them, and they may compel the attendance of witnesses from any part of the United Kingdom to give evidence at such inquiries (*d*).

Powers of the Commissioners in enforcing statutory provisions.

By the original constitution of the Board their jurisdiction extends to all the British dominions, but their powers and authorities as to British possessions abroad are extended to the governor or other administrator of the colony (*e*).

Jurisdiction.

1062. No Commissioner of Customs and Excise can be compelled to serve on a jury or to fill any other public office (*f*).

Privileges.

Officers of customs and excise are appointed by the Commissioners of Customs and Excise (*g*) for the performance of all duties connected with the management and collection of customs and excise duties (*h*).

Officers of customs and excise.

They hold office during the pleasure of the Commissioners, or of

Office and salaries.

(*t*) As to these, see pp. 697 *et seq.*, *post*.
(*u*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 1, 2.
(*x*) *Ibid.*, ss. 1, 2.
(*a*) *Ibid.*, s. 3. As to these officers, see the text, *infra*.
(*b*) Excise Transfer Order, 1909 (Stat. R. & O., 1909. p. 239), r. 15, applying Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 24 (1).
(*c*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 169, 197, 208, 209, 211, 212, 213; Excise Transfer Order, 1909, rr. 23, 24, applying Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), ss. 32, 35.
(*d*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 32, 33, 37.
(*e*) *Ibid.*, s. 149; and see title DEPENDENCIES AND COLONIES, Vol. X., p. 529.
(*f*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 9; Juries Act, 1870 (33 & 34 Vict. c. 71), s. 9; see title JURIES, Vol. XVIII., p. 232; *Re Dutton*, [1892] 1 Q. B. 486; and see title LOCAL GOVERNMENT, Vol. XIX., pp. 297, 298.
(*g*) As to the Commissioners of Customs and Excise, see the text, *supra*.
(*h*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 3; Excise Transfer Order, 1909, r. 10.

SECT. 3. The Commissioners of Customs and Excise.

the Treasury (*i*), and are paid such salaries as the Commissioners may fix (*j*). These salaries may not be seized or taken under process of court until they have been paid to or for the use of the officials to whom they are assigned (*k*).

Privileges.

The officers are exempt from service on juries (*l*), and cannot be compelled to undertake any local public office (*m*).

Powers of officers.

1063. The officers have a right of access to harbours, docks, and piers (*n*); they may go upon and search any ships (*o*), open packages (*p*), and search persons suspected of having smuggled goods upon them (*q*). Where a person is summoned for obstructing an officer in the execution of his duty in searching a ship, the court has no power to inquire into the reasonableness or unreasonableness of the search, unless it was a mere pretence for the purpose of justifying an interference or annoyance by the officer (*r*). They may seize any ships, boats, carts or conveyances used for "running" prohibited goods (*s*), or spirits unlawfully removed (*t*), and may arrest persons engaged in the removal (*u*).

Damages for wrongful seizure.

If, on proceedings for the recovery of goods so seized, a verdict is found for the claimant, and an action for damages for wrongful seizure is afterwards brought by him against the officers, he may not recover more than 2*d.* damages without costs, if the judge at the original trial has found that there was reasonable and probable cause for the seizure (*a*).

Conduct of proceedings.

Under the order and direction of the Commissioners, officers may conduct proceedings in customs and excise cases (*b*).

Penalties for false returns etc.

1064. All officers concerned in the collection, receipt, disbursement or expenditure of public revenue are liable to fine and imprisonment at the discretion of the court if they knowingly

(*i*) *Worthington* v. *Robinson* (1896), 75 L. T. 446, C. A.

(*j*) See note (*d*), p. 749, *ante*.

(*k*) Revenue, Friendly Societies, and National Debt Act, 1882 (45 & 46 Vict. c. 72), s. 3.

(*l*) See title JURIES, Vol. XVIII., p. 232.

(*m*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 9; and see title LOCAL GOVERNMENT, Vol. XIX., pp. 297, 298.

(*n*) Harbours, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 28.

(*o*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 47, 134, 147, 182.

(*p*) *Ibid.*, ss. 54, 102.

(*q*) Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 12.

(*r*) *Anderson* v. *Reid* (1902), 86 L. T. 713.

(*s*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 202.

(*t*) Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 38; Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 154; and see *Evans* v. *M'Loughlan* (1861), 4 Macq. 89, H. L.

(*u*) Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 38.

(*a*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 202, 267; and see *Jacobsohn* v. *Blake* (1844), 6 Man. & G. 919. As to when an action for nonfeasance will lie against an officer for refusing to do his duty, see *Barry* v. *Arnaud* (1839), 10 Ad. & El. 646; and see title PUBLIC AUTHORITIES, Vol. XXIII., pp. 316 *et seq.*

(*b*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 273; and see *R.* v. *Turner* (1894), 58 J. P. 320.

furnish false statements or returns of moneys collected by them or entrusted to their care, or of the balances of money on their hands, and, on conviction, they become permanently incapable of holding any office under the Crown (*c*).

SECT. 3. The Commissioners of Customs and Excise.

1065. Any person, not being an officer of inland revenue or an officer of customs and excise, who unlawfully assumes the character of such officer, is guilty of a misdemeanour and liable on summary conviction to not exceeding three months' imprisonment with or without hard labour (*d*).

Personation.

Part III.—Sources of Revenue.

SECT. 1.—*Permanent Sources.*

1066. The permanent sources of the Revenue are—(1) so much of the hereditary revenues of the Crown as have been surrendered to the nation (*e*), including the revenue derived from the Post Office (*f*); (2) revenue derived from taxation, which includes income tax (*g*), death duties (*h*), customs duties (*i*), excise duties and licences (*k*), stamp duties (*l*), land tax (*m*), duties on land values (*n*), inhabited house duty (*o*), and corporation duty (*p*); and (3) certain miscellaneous sources of revenue (*q*), the principal items in which are the dividends upon 176,602 Suez Canal shares bought by the Government in 1875.

Hereditary revenues of Crown; taxation; miscellaneous sources.

SECT. 2.—*Temporary Sources.*

SUB-SECT. 1.—*Treasury Bills.*

1067. The issue of Treasury bills is a means of raising money when the receipts on the Exchequer account are at any time insufficient to meet the expenditure sanctioned by Parliament. Such bills can only be issued on the authority of an Act of Parliament (*r*), and it is usual in Consolidated Fund or Appropriation Acts

Purpose.

(*c*) Embezzlement by Collectors Act, 1810 (50 Geo. 3, c. 59), s. 2; and see Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 14 (2); Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 14 (2).

(*d*) Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 12, extended to officers of customs and excise by Stat. R. & O. 1909, No. 197, r. 17.

(*e*) See title CONSTITUTIONAL LAW, Vol. VII., pp. 108—217.

(*f*) See *ibid.*, p. 101; title POST OFFICE, Vol. XXII., pp. 633, 634.

(*g*) See title INCOME TAX, Vol. XVI., pp. 607 *et seq.*

(*h*) See title ESTATE AND OTHER DEATH DUTIES, Vol. XIII., pp. 177 *et seq.*

(*i*) See pp. 587 *et seq.*, *post.*

(*k*) See pp. 610 *et seq.*, *post.*

(*l*) See pp. 700 *et seq.*, *post.*

(*m*) See title LAND TAX, Vol. XVIII., pp. 307 *et seq.*

(*n*) See pp. 549 *et seq.*, *post.*

(*o*) See title INHABITED HOUSE DUTY, Vol. XVII., pp. 181 *et seq.*

(*p*) See title CORPORATIONS, Vol. VIII., pp. 377, 378; and see pp. 734, 735, *post.*

(*q*) As to these, see title PARLIAMENT, Vol. XXI., p. 771, note (*i*); and see Finance Accounts, 1911—12, p. 27.

(*r*) Treasury Bills Act, 1877 (40 & 41 Vict. c. 2), s. 3.

SECT. 2. Temporary Sources.

to give authority to borrow up to the whole amount of the issues from the Consolidated Fund sanctioned by such Acts (*s*).

Date; renewal; interest.

1068. The latest date for payment of the bills is generally fixed by the Act which authorises the issue and is not more than twelve months from the date of the bills (*t*). Subject to such express limitation, the date of each bill is determined by the Treasury (*a*), which has power, unless provision to the contrary is made, to issue, during any financial year and a period of three months after its expiration, new bills to raise money to meet those which fall due and are paid off (*b*). The interest is also fixed by the Treasury (*c*).

Method of issuing bills.

1069. The bills are issued by the Bank of England on the authority of a warrant from the Treasury countersigned by the Comptroller and Auditor-General for amounts directed by the Treasury (*d*). The signature of one of the secretaries to the Treasury is necessary (*e*); in other respects the form is settled by Treasury regulations (*f*). The Bank of England receives, as remuneration for management, £200 for every million pounds of the maximum amount outstanding during the financial year (*g*).

Application of money raised.

1070. All money raised by Treasury bills must be paid into the Exchequer account (*h*), and is then generally made available for any purpose for which that fund is available (*i*). The principal and interest are a charge on the Consolidated Fund (*j*), and may be repaid out of the old or new sinking fund (*k*).

SUB-SECT. 2.—*Exchequer Bills.*

Purpose.

1071. Resort is made to the issue of Exchequer bills or bonds when an advance, which it is not desired to add to the funded debt (*l*), is required for a period for which the issue of short term Treasury bills is inconvenient (*m*).

Term; interest; renewal.

1072. Unless express provision is made in the Act authorising the issue of such bills or bonds, the term of currency must not exceed six years (*n*), and the interest must not exceed £5½ per

(*s*) See Consolidated Fund (No. 1) Act, 1912 (2 Geo. 5, c. 1), s. 3; Appropriation Act, 1912 (2 Geo. 5, c. 7), s. 2.
(*t*) Treasury Bills Act, 1877 (40 & 41 Vict. c. 2), s. 4.
(*a*) *Ibid.*, s. 4.
(*b*) *Ibid.*, s. 6, as extended by the Revenue Act, 1906 (6 Edw. 7, c. 20), s. 10 (1).
(*c*) Treasury Bills Act, 1877 (40 & 41 Vict. c. 2), s. 4.
(*d*) *Ibid.*, s. 8.
(*e*) National Debt Act, 1889 (52 & 53 Vict. c. 6), s. 5.
(*f*) Treasury Bills Act, 1877 (40 & 41 Vict. c. 2), s. 9.
(*g*) Revenue Act, 1906 (6 Edw. 7, c. 20), s. 10 (2). As to the Bank of England, see title BANKERS AND BANKING, Vol. I., pp. 570 *et seq.*
(*h*) Treasury Bills Act, 1877 (40 & 41 Vict. c. 2), s. 5.
(*i*) *E.g.*, Consolidated Fund (No. 1) Act, 1912 (2 Geo. 5, c. 1), s. 3 (4).
(*j*) Treasury Bills Act, 1877 (40 & 41 Vict. c. 2), s. 5.
(*k*) *Ibid.*, s. 7; applying the Sinking Fund Act, 1875 (38 & 39 Vict. c. 45), ss. 3, 5.
(*l*) As to the funded debt, see p. 755, *post.*
(*m*) See, for example, Supplemental War Loan Act, 1900 (63 & 64 Vict. c. 61), s. 1 (1).
(*n*) Exchequer Bills and Bonds Act, 1866 (29 & 30 Vict. c. 25), s. 26.

cent. (*o*). Subject to these limitations, the date and interest are fixed by the Treasury (*p*), and the Treasury may during any financial year and a period of three months after its expiration issue new Exchequer bills to raise money to meet those which are paid off or paid in as currency for duties (*q*).

Exchequer.

In other respects the regulations as to the issue and management of Exchequer bills or bonds are similar to those in respect of Treasury bills (*r*).

Part IV.—Duties on Land Values.

SECT. 1.—*Introductory and Definitions.*

Nature of taxes.

1073. The duties on land values, *i.e.*, increment value duty, reversion duty, undeveloped land duty and mineral rights duty (*s*), are all imposed by the Finance (1909-10) Act, 1910 (*t*), Part I. With the exceptions of mineral rights duty and the increment value duty chargeable annually on minerals leased or worked (*u*), the taxes on land values are taxes on capital values.

Basis of taxable increment.

1074. For the purposes of the assessment of increment value duty (*v*), the taxable increment is taken as that accruing since the 30th April, 1909, and the value of all the land (*w*) in the United Kingdom as on that date is ascertained and recorded under the heads of total value and site value (*x*). These are the "original total value" and the "original site value" of the land (*a*).

(*o*) Exchequer Bills and Bonds Act, 1866 (29 & 30 Vict. c. 25), s. 5.

(*p*) *Ibid.*

(*q*) Treasury Bills Act, 1877 (40 & 41 Vict. c. 2), s. 6, as extended by the Revenue Act, 1906 (6 Edw. 7, c. 20), s. 10 (1).

(*r*) See the Exchequer Bills and Bonds Act, 1866 (29 Vict. c. 25); and, as to Treasury bills, see pp. 547, 548, *ante*.

(*s*) For definitions of those duties respectively, see pp. 557, 571, 575, 579, *post*.

(*t*) 10 Edw. 7, c. 8.

(*u*) See pp. 569, 579, *post*.

(*v*) In the case of increment value duty chargeable as an annual tax on minerals leased or worked, this does not apply; see p. 569, *post*.

(*w*) Including minerals, except gold and silver mines and except minerals leased or worked at the date of the valuation, and whether the land is exempted from the taxes or not (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 23 (2), (3), 26 (1)). For definitions of "land," see title REAL PROPERTY AND CHATTELS REAL, pp. 156, 157, *ante*. In the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Part I. (Duties on Land Values), the term "land" does not, as a rule, include any incorporeal hereditament issuing or granted out of land (*ibid.*, s. 41). "Land" does not include mines of gold and silver (2 Co. Inst. 577; *The Case of Mines* (1568) 1 Plowd. 310, 336; *A.-G.* v. *Morgan*, [1891] 1 Ch. 432, 455, C. A.; and see stat. (1688) 1 Will. & M. c. 30, s. 3, and (1693) 5 Will. & M. c. 6; and see titles CONSTITUTIONAL LAW, Vol. VII., pp. 116—118; MINES, MINERALS, AND QUARRIES, Vol. XX., p. 507.

(*x*) As to this valuation, see pp. 553 *et seq.*, *post*.

(*a*) As to the values which may be substituted for these under *ibid.*, s. 2 (3), as amended by the Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 2, and the Finance Act, 1912 (2 & 3 Geo. 5, c. 8), s. 10, see p. 558, *post*. In the case of land held by a statutory company, the cost to the company of the land is to be taken as the original site value (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 38 (2); see pp. 553, 554, *post*. The assessable site value cannot be a *minus* quantity. If the charges falling to be deducted

SECT. 1. Introductory and Definitions.

Definition of total value.

1075. The "total value" is the amount which the fee simple (*b*) of the land, if sold at the time in the open market by a willing seller in its then condition (*c*) free from incumbrances (*d*) and from any burden, charge, or restriction (other than rates or taxes), might be expected to realise (*e*), less the amount by which that value would be diminished if the land were sold subject to any fixed charges (*f*) and to any public rights of way (*g*) or any public rights of user, and to any right of common (*h*) and to any easements (*i*) affecting the land, and to any covenant or agreement restricting the use of the land entered into or made before the 30th April, 1909, or, if entered into or made since that date, provided the restraint was in the opinion of the Commissioners of Inland Revenue desirable in the interests of the public when imposed, or in view of the character and surroundings of the neighbourhood (*j*).

Definition of site value.

1076. The "site value" is what remains after the following further deductions have been made from the total value as thus found:—

from the total value to arrive at the site value would, if subtracted, make the latter a mathematically *minus* quantity, the site value is to be taken as *nil* (*Herbert's Trustees* v. *Inland Revenue* (1912), 49 Sc. L. R. 699).

(*b*) "Fee simple" means the fee simple in possession not subject to any lease, but does not include an undivided share in a fee simple in possession (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 41). As to the ordinary meaning of the term, see title REAL PROPERTY AND CHATTELS REAL, p. 164, *ante*. In the case of copyholds of inheritance, copyholds held for a life or lives, or for years where the tenant has a right of renewal, and of customary freeholds, the term "fee simple" means the whole copyhold or customary interest or estate (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 40 (1)). An undivided share in a fee simple is an "interest in land" (*ibid.*, s. 41); and see note (*b*), p. 558, *post*. By the statutory rules made by the Commissioners under Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 3 (2) (3), a lease for a term of which ninety-nine years or more remain unexpired is treated as a fee simple.

(*c*) *I.e.*, in its condition as at the time when the valuation is made, whether for original site value or on the occasion of a charge. As to such occasions, see pp. 560, 561, *post*.

(*d*) "Incumbrance" includes a mortgage in fee or for a less estate and a trust for securing money, and a lien, and a charge of a portion, annuity, or any capital or annual sum; but it does not include any "fixed charge" as defined by the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 41, namely, any tithe or tithe rentcharge or other periodical payment in lieu of or in the nature of tithe, or any fee farm rent, rent seck, quit rent, chief rent, rent of assize, or any other perpetual rent or annuity granted out of land; nor does it include any burden or charge (other than rates or taxes) arising by operation of law or imposed by any Act of Parliament, or imposed in pursuance of the exercise of any powers or the performance of any duties under such Act, otherwise than by a person interested in the land, or in consideration of an advance to any person interested in the land (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 41).

(*e*) This is the "gross value of land"; see Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 25 (1).

(*f*) For the meaning of "fixed charge," see note (*d*), *supra*.

(*g*) As to public rights of way, see title HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., pp. 1 *et seq.*

(*h*) As to rights of common, see title COMMONS AND RIGHTS OF COMMON, Vol. IV., pp. 441 *et seq.*

(*i*) As to easements, see title EASEMENTS AND PROFITS À PRENDRE, Vol. XI., pp. 233 *et seq.*

(*j*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 25. As to restrictive covenants, see titles EQUITY, Vol. XIII., pp. 100 *et seq.*; LANDLORD AND TENANT, Vol. XVIII., pp. 515 *et seq.*; SALE OF LAND. An

Deductions from site value.

(1) The difference between the value of the bare site (*k*) and the value of the land if sold in its present condition (*l*) free from incumbrances and from all burdens or charges other than rates or taxes (*m*).

(2) Any part of the total value directly attributable to works executed (*n*) or expenditure of a capital nature (*o*) incurred *bonâ fide* by or on behalf of or solely in the interests of any person interested in the land for the purpose of increasing its value as building land, or for the purpose of any business (*p*), trade, or industry other than agriculture (*q*); or to the appropriation of any land or the gift of any land by any person interested in the land for the purpose of streets, roads, paths, squares, gardens, or other open spaces for the use of the public (*r*); or to the expenditure of money on the redemption of land tax (*s*), or any fixed charge (*t*), or on the enfranchisement of copyhold land or customary freeholds (*u*), or on releasing the land from restrictive covenants (*a*); or to goodwill (*b*) or any other matter personal to the owner, occupier, or other person interested for the time being in the land.

(3) Any sums which in the opinion of the Commissioners would

appeal lies to the referee from the decision of the Commissioners; see p. 582, *post*.

(*k*) This expression does not occur in the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8). It is used here to denote the value of the land if divested of any buildings and of any other structures (including fixed or attached machinery) on, in, or under the surface, which are appurtenant to or used in connection with the buildings, and of all growing timber, fruit trees, fruit bushes, and other things growing on the land; see *ibid.*, s. 25 (2); and see *Herbert's Trustees* v. *Inland Revenue* (1912), 49 Sc. L. R. 699, *per* Lord JOHNSTON, at p. 705.

(*l*) See note (*c*), p. 550, *ante*.

(*m*) This difference is the "full site value" of the land (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 25 (2)).

(*n*) Other than buildings for which a deduction is made; see note (*k*), *supra*.

(*o*) Including expenses of advertisement (*ibid.*).

(*p*) "Business" includes "everything which occupies the time and attention and labour of a man for the purpose of profit" (*Smith* v. *Anderson* (1880), 15 Ch. D. 247, 258, C. A., *per* JESSEL, M.R.).

(*q*) "Agriculture" includes the use of land as meadow or pasture land, or orchard or osier or woodland, or for market gardens, nursery grounds, or allotments (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 41). It probably does not include the use of land for glasshouses or greenhouses; see *ibid.*, s. 16 (2), where this use is expressly included for the purposes of the charge of undeveloped land duty; and see *Smith* v. *Richmond* (1899), 81 L. T. 269, H. L. Where the works executed or expenditure incurred for the purpose of improving the value of the land for agriculture have actually improved the value of the land for any of the other purposes referred to, the works or expenditure are to be regarded as having been executed or incurred for the other purpose also (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 25 (4)).

(*r*) As to such purposes, see titles HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., pp. 33 *et seq.*; OPEN SPACES AND RECREATION GROUNDS, Vol. XXI., pp. 577 *et seq.*

(*s*) See title LAND TAX, Vol. XVIII., pp. 321 *et seq.*

(*t*) For definition of "fixed charge," see note (*d*), p. 550, *ante*.

(*u*) See title COPYHOLDS, Vol. VIII., pp. 111 *et seq.*

(*a*) This is limited to the restrictive covenants referred to as those to be taken account of in ascertaining the total value of land; see p. 550, *ante*.

(*b*) As to the nature of goodwill, see titles PARTNERSHIP, Vol. XXII., pp. 104 *et seq.*; TRADE AND TRADE UNIONS.

SECT. 1. Introductory and Definitions.

require to be expended in order to clear the land of buildings, timber, trees, or other things of which it would be necessary to divest the land in order to arrive at the bare site value (*c*).

Increment value on minerals:

1077. For the purpose of assessing the increment value duty on minerals (*d*) two analogous values of the minerals are taken and recorded, the increment value subsequently accruing on the values thus found being that upon which the duty is leviable (*e*):—

(1) total value;

(1) The "total value": this is the amount which the fee simple of the minerals, if sold in the open market by a willing seller in their condition at the time the valuation is made, might be expected to realise (*f*); and

(2) capital value.

(2) The "capital value": this is the total value after deducting any sums which may be allowable (*g*) for any works executed, or expenditure of a capital nature (*h*) incurred, *bonâ fide* by or on behalf of any person interested in the minerals for the purpose of bringing them into working, or, where they have been partly worked, such proportion of these sums as corresponds to the amount of the minerals still unworked (*i*).

Original total value; original capital value.

1078. The original total value and the original capital value of minerals which were not on the 30th April, 1909, the subject of a mining lease (*j*) or being worked (*k*) are the values as on that date.

(*c*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 25 (4).

(*d*) As to the general valuation, see pp. 553 *et seq.*, *post*.

(*e*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 23 (2), (4). The term "minerals" here includes land comprising minerals. For definition of minerals, see note (*e*), p. 579, *post*; *Hamilton* (*Duke*) v. *Graham* (1871), L. R. 2 Sc. & Div. 166.

(*f*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 22 (7). This would include the value of the machinery attached to and necessary for the working of the mine; see *Addie & Sons* v. *Inland Revenue Solicitor* (1875), 12 Sc. L. R. 274 [282].

(*g*) The sums to be allowed and the proportion of any sums expended which may be allowed are fixed by the Commissioners subject to appeal (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 23 (1), 33 (1)).

(*h*) This would include the cost of and incidental to opening the mine as distinct from the expense of working it; see *Coltness Iron Co.* v. *Black* (1881), 6 App. Cas. 315, *per* Lord PENZANCE, at p. 326.

(*i*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 23 (1).

(*j*) A "mining lease" here means a lease for mining purposes, that is, for searching for, winning, working, getting, making merchantable, carrying away, or disposing of, mines and minerals, or purposes connected therewith, and includes an agreement for such a lease and any tenancy or licence, whether by deed, parol, or otherwise, for mining purposes (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 24); compare title MINES, MINERALS, AND QUARRIES, Vol. XX., p. 531, note (*b*). A grant to lessees of minerals of the right to let down the surface is a mining lease (*Sitwell* v. *Londesborough* (*Earl*), [1905] 1 Ch. 460, 464). The lease may include the use of contiguous lands necessary for working the minerals (*Re Reveley's Settled Estates* (1863), 11 W. R. 744). In such cases the land included in the lease would be regarded as minerals for the purposes of the assessment and collection of the duties (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 23 (4)). As to mining leases generally, see title MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 528 *et seq.*

(*k*) Minerals which are being won for the purpose of being immediately worked are deemed to be minerals which are being worked, and minerals are deemed to be comprised in a mining lease if the right to work them is the subject of a mining lease, or if they are being worked under the terms of such a lease although it has expired (Finance (1909-10) Act, 1910 (10

But if the proprietor of the minerals has not specified the nature of the minerals, and given an estimate of their capital value in his return made to the Commissioners for the purposes of the general valuation (*l*), they are regarded as having no original value, and any value subsequently found on an occasion of charge is assessed as increment value (*m*).

In the case of minerals which on the 30th April, 1909, were the subject of a mining lease or were being worked, the original values are those found after the minerals have ceased for a period of not less than two years to be comprised in a mining lease or to be worked (*n*).

Rights of limited owners, trustees, and mortgagees to charge land with duties.

1079. A tenant for life (*o*), or a person having the powers of a tenant for life, or a trustee, who is liable to pay any sums in respect of increment value duty or reversion duty assessed on settled land (*p*) of which he is tenant or trustee, or to pay any sums reasonably incurred in connection with a valuation made of the land for the purposes of the duties, may charge by deed upon the land any amount so paid by him (*q*). A mortgagee of land, who is liable to pay any sum on account of either of these duties assessed on the land, may add to his security the sum for which he is so liable, as well as any sum by way of costs and expenses properly incurred by him in connection with the payment (*r*).

SECT. 2.—*The General Valuation.*

Purpose of valuation.

1080. In order to ascertain the value of all the land in the United Kingdom on the 30th April, 1909, a general valuation is being carried out in the following way.

Values to be shown.

The Commissioners are required to make this valuation (*s*), showing separately the total value and the site value of the land, and in the case of agricultural land its value also for agricultural purposes (*t*).

Edw. 7, c. 8), s. 24). "Winning" means reaching the mineral and putting it in such a condition that it can be worked in the ordinary way (*Lewis* v. *Fothergill* (1869), 5 Ch. App. 103, 106, n.).

(*l*) As to the general valuation, see the text, *infra*.

(*m*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 23 (2), (3).

(*n*) *Ibid.*, ss. 22 (7), 23 (1), (3).

(*o*) See title SETTLEMENTS.

(*p*) See title SETTLEMENTS.

(*q*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 39 (1). In the case of settled land, notice of the charge must be given to the trustees of the settlement (*ibid.*, s. 39 (2)). As to such notice, see title SETTLEMENTS. The charge thus created may be transferred like a mortgage (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 39 (1)). By *ibid.*, s. 39 (3), the Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 59, 60, 62 (see titles INFANTS AND CHILDREN, Vol. XVII., p. 94; LUNATICS AND PERSONS OF UNSOUND MIND, Vol. XIX., p. 444), apply to the exercise of the power under the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 39, in the same manner as they apply to the statutory powers of a tenant for life.

(*r*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 39 (4).

(*s*) "As soon as may be" after the passing of the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8); see *ibid.*, s. 26. There is no date mentioned in the Act for its commencement; it received the Royal Assent on the 29th April, 1910.

(*t*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 26. This provision includes Crown lands (see *ibid.*, s. 10 (1), which grants exemption to lands

SECT. 2. The General Valuation.

In the case of mineral parcels of land, the values to be ascertained are the total value and the capital total value of the minerals (*u*). The values to be taken are in all cases the values as on the 30th April, 1909 (*v*).

Pieces of land in separate occupation.

1081. Each piece of land in separate occupation, and, if the owner requires it, any part of any land in separate occupation, is to be separately valued (*a*). But, on the request of the owner of any pieces of contiguous land not exceeding 100 acres in extent, the value of the pieces may be taken together although under separate occupation, should the Commissioners in the special circumstances think it proper that they should be so valued (*b*).

Returns by owners.

1082. To enable the necessary particulars to be obtained, the Commissioners are authorised to call upon any owner of land (*c*), or any person receiving rent in respect of land, to send in to them a return containing such information as to the ownership, tenure, or area of the land, or such other matters as may properly be required for the purpose of the valuation of the land (*d*), as it is in his power to give.

belonging to the Crown from increment value duty, from which it is to be inferred that, but for the express exemption in this respect, the Act would have made the duty chargeable on such lands), and it also includes minerals. For definition of "land," see note (*w*), p. 549, *ante*; and, as to the minerals affected, see note (*k*), p. 552, *ante*; and see note (*n*), p. 553, *ante*. But minerals which on the 30th April, 1909, were comprised in a mining lease, or being worked by the proprietor, are not to be valued until the lease or the working ceases, and minerals which were not so comprised or worked on that date are regarded as having no value as minerals, unless the proprietor of the minerals in the return sent in by him has specified the nature of the minerals and given his estimate of their capital value (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 23 (2)). In the case of land held by a statutory company, the cost of the land to the company is to be taken as the original site value of the land; see note (*a*), p. 549, *ante*. For definitions of "total value" and "site value," see p. 550, *ante*.

(*u*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 23. For definitions of "total value" and "capital value" of minerals, see p. 552, *ante*.

(*v*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 26 (1).

(*a*) *Ibid.* Separate occupation means rateable occupation; see *A.-G.* v. *Mutual Tontine Westminster Chambers Association*, (1876), 1 Ex. D. 469, C. A., *per* JESSEL, M.R., at p. 478; for the elements to constitute rateable occupation, see title RATES AND RATING, pp. 4 *et seq.*, *ante*.

(*b*) Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 5. The powers of the Commissioners under this provision to adopt the larger unit of valuation are exercised chiefly in the case of building plots of land ripe for development, where boundaries of the areas of occupation are frequently of a transitory nature. In the case of land abutting on a highway there is a presumption that the land abutting on the highway *usque ad medium filum* is included in the tenement; see title HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., p. 51; *Central London Railway* v. *City of London Land Tax Commissioners*, [1911] 2 Ch. 467, C. A. (a case of land tax); see also title BOUNDARIES, FENCES, AND PARTY WALLS, Vol. III., pp. 120 *et seq.*; compare titles FISHERIES, Vol. XIV., p. 583; WATERS AND WATERCOURSES.

(*c*) The "owner" is defined as the person entitled in possession to the rents and profits of the land in virtue of any estate of freehold, but, if the land is let on a lease for a term of which more than fifty years are unexpired, the lessee under the lease, or, if there are two or more such lessees, the lessee under the last created underlease, is deemed to be the "owner" (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 41).

(*d*) "Other matters" which might properly be required for the purpose

They may also require any person paying rent, or who as agent receives rent in respect of land, to furnish them with the name and address of the person to whom the rent is paid or on behalf of whom the rent is received, as the case may be (*e*). Any owner of land and any person receiving rent in respect of land who fails to furnish these particulars when called upon to do so by the Commissioners is liable to a penalty not exceeding £50 recoverable in the High Court (*f*).

Area unit. Valuation officers.

1083. The income tax parish (*g*) is taken as the unit of area for the purposes of the valuation, and an officer has been appointed for each parish throughout England and Wales (*h*), for the purpose of making application on behalf of the Commissioners to owners of land for the information required in connection with the valuation (*i*).

Valuation book.

This officer is supplied with a valuation book for the parish, into which are entered from the rate-book (*k*) the particulars of the ownership, occupation, extent and rateable value of the property. Each separate hereditament is entered and numbered consecutively for each parish, the number thus given, together with the name of the parish, forming the "identification number" by which the unit of valuation is to be officially known. These identification numbers, together with the particulars of the rating, are inserted prior to their issue on all forms of return issued to the owners by the valuation officer (*l*). On receipt of the returns from owners and

Identification number.

of the valuation do not include an estimate of the annual value of the land by an owner who is also the occupier (*Dyson* v. *A.-G.*, [1912] 1 Ch. 158, C. A., *per* COZENS-HARDY, M.R., at p. 165, and *per* FARWELL, L.J., at p. 171). The owner may, if he thinks fit, furnish an estimate of the total value or site value, or both, of the land, and, in making their valuation, the Commissioners must consider such estimates (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 26 (3)).

(*e*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 31 (1).

(*f*) *Ibid.*, s. 26 (2). But if the notice calling for the return specifies a shorter period within which it is to be made than the thirty days allowed by the statute, or if any information in excess of that authorised is asked for, the notice calling for the return may be disregarded and no penalty is incurred (*Dyson* v. *A.-G.*, [1912] 1 Ch. 158, C. A.; *Burghes* v. *A.-G.*, [1912] 1 Ch. 173, C. A.). The form must specify the parcels of land in respect of which the names and addresses are to be furnished, and must not require the person to whom it is addressed to give the descriptions and precise situations of the parcels of land in respect of which the rent was paid or received (*Burghes* v. *A.-G.*, *supra*). As to the recovery of penalties, see p. 737 *et seq.*, *post.*

(*g*) This may consist of several poor law parishes (Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 37; and see titles INCOME TAX, Vol. XVI., p. 617; POOR LAW, Vol. XXII., pp. 574, 592). In such case the name of the first parish in the group is taken in forming the identification number (see the text, *infra*) of the hereditament.

(*h*) The officers appointed in England and Wales were in almost every case those holding the offices of assessors of income tax for the respective parishes. As to these, see title INCOME TAX, Vol. XVI., pp. 615, 616.

(*i*) The power given to the Commissioners by the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 26 (2), 31 (1), to call for returns has been held to be properly exercised by their calling for these to be sent to their appointed officers (*Burghes* v. *A.-G.*, *supra*; *Dyson* v. *A.-G.*, *supra*.

(*k*) See title RATES AND RATING, pp. 53, 56, *ante*.

(*l*) As to the necessity for the insertion of these particulars prior to the

SECT. 2. The General Valuation.

others interested in the land the information received is copied into the valuation book for use by the official district valuer.

Valuers.

1084. The work of valuation is done by valuers, one of whom is appointed for each of the districts into which the country has been mapped out (*m*). Each valuer is supplied with an official "field book," and these books, when completed, form the draft of the General Valuation Book for the United Kingdom. They contain, by reference to each unit of valuation, the particulars furnished by the owners' returns, the various steps taken by the valuer in making his valuations, the deductions allowed by him in each case, and the gross value (*n*), full site value, total value, and assessable site value (*o*) of the land.

Field book.

Service of provisional valuation.

1085. A copy of the valuation thus made, that is, the "provisional valuation," is then served upon the owner of the land and upon any person interested in the land who applies for a copy (*p*).

Settlement of values.

1086. Where no objection (*q*) is made by any person entitled to object (*r*) within the period allowed (*s*), the provisional valuation becomes final, and, subject to the right of an owner in certain cases (*t*) to have a substituted value taken, the total value and the assessable site value thus found are the original total value and the original site value (*a*). Where objection has been duly made (*b*)

issue of the form, see *Burghes* v. *A.-G.*, [1912] 1 Ch. 173, C. A., *per* FLETCHER MOULTON, L.J., at p. 187.

(*m*) Great Britain was for the purpose of valuation divided into 111 valuation districts. In Ireland the work was entrusted to the Government Valuation Department, which had been in existence prior to 1910.

(*n*) For definition of "gross value," see Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 25 (1); and see note (*e*), p. 550, *ante*.

(*o*) For definitions of "full site value," "total value," and "assessable site value," see pp. 549 *et seq.*, *ante*.

(*p*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 27 (1), (5).

(*q*) Objection to the provisional valuation must be made within sixty days after service, such objection stating the grounds of objection and the amendments desired (*ibid.*, s. 27 (2)).

(*r*) That is, by any person entitled as owner or as having an interest in the land to be served with a copy of the provisional valuation (*ibid.*, s. 27 (1), (5)). Where the tenant for life and the trustees exercise their discretion as to whether they will accept a provisional valuation of settled land, the court will not interfere at the instance of the tenant for life (*Re Knollys' Trusts, Saunders* v. *Haslam*, [1912] 2 Ch. 357, C. A.). The Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 27, does not impose upon trustees a general duty to check provisional valuations, and the court will not direct trustees to check such valuations, unless it is shown that serious injury to the trust estate will otherwise result (*ibid.*); but the court may in a particular case give leave to trustees to take such steps as may be advisable to test provisional valuations (*Re Smith-Bosanquet's Settled Estates* (1912), 107 L. T. 191).

(*s*) See note (*q*), *supra*.

(*t*) See note (*a*), p. 549, *ante*; and see note (*l*), p. 558, *post*.

(*a*) As to the meaning of "total value," "assessable site value," "original total value," and "original site value," see pp. 549, 550, *ante*. Even where no objection has been made, the Commissioners may amend the provisional valuation, whereupon the amended valuation becomes the provisional valuation of which copies are served and may be objected to (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 27 (3)).

(*b*) If, on notice of objection, the Commissioners amend the provisional

and the provisional valuations appealed against (*c*), the values as fixed on appeal are to be taken as the original total value and the original site value of the land (*d*).

Returns to head valuation office.

1087. Upon the completion of any valuations (*e*) the full details are sent from the office of the district valuer to the head office at Somerset House, London, in the case of land in England and Wales, and to the head office at Edinburgh in the case of land in Scotland, where they are recorded (*f*).

Records to be kept by Commissioners.

1088. The Commissioners are required to keep records of the particulars of all valuations, apportionments, reapportionments, and assessments made by them and of any deductions allowed in determining any value, and of the amount of any increment value duty, reversion duty, undeveloped land duty, or mineral rights duty paid in respect of any land (*g*).

Duty of Commissioners to furnish particulars.

1089. The Commissioners must furnish to any person interested in any land (*h*), and to any person authorised by any person so interested, on his application, and on payment of a fee not exceeding 2*s.* 6*d.*, copies of any particulars recorded by them in reference to the land (*i*).

SECT. 3.—*Increment Value Duty.*

SUB-SECT. 1.—*As a Capital Charge on Land Other than Minerals.*

(i.) *Definition.*

Nature of the duty.

1090. Increment value duty is a duty (*k*) charged on the amount, if any, by which the site value of the land, on the occasion on

valuation so as to be satisfactory to the objectors, the total value and site value so amended are adopted as the " original total value " and " original site value " (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 27 (2)). If the provisional valuation is not amended so as to be satisfactory to the objectors, the objectors may give notice of appeal, but, if no notice of appeal is given, the total value and site value stated in the provisional valuation, subject to any amendments made by the Commissioners in order to meet objections, are adopted as the " original total value " and " original site value " (*ibid.*, s. 27 (4)).

(*c*) As to the procedure on appeals, see pp. 582 *et seq.*, *post.*

(*d*) As to the meaning of " original total value " and " original site value," see p. 549, *ante.*

(*e*) The boundaries of each unit of valuation (see p. 555, *ante*) in a district are also permanently recorded on a set of ordnance plans which are kept at each district office.

(*f*) The full details sent to Somerset House and to Edinburgh are entered on cards specially prepared for the purpose. Each of the cards is appropriated to a particular unit of valuation (see p. 555, *ante*), and is distinguished by the identification number (see p. 555, *ante*) of the unit to which it relates. The cards are made up into parishes, those for each parish being filed in numerical order. The particulars of any subsequent occasional valuations of the land to which they refer, and any apportionments and payments of duty, are also entered on the cards. These cards and particulars thus constitute the record which the Commissioners are required to keep.

(*g*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 30 (1).

(*h*) As to such persons, see note (*b*), p. 558, *post*, note (*r*), p. 556, *ante.*

(*i*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 30 (2).

(*k*) Increment value duty, as between tenant for life and remainderman, is apparently payable out of capital (*Re Smith-Bosanquet's Settled Estates* (1912), 107 L. T. 191).

SECT. 3. Increment Value Duty.

which the charge is made, exceeds the original site value of the land (*l*).

(ii.) *Occasions of Charge.*

Occasions on which duty is chargeable.

1091. The duty is chargeable on the occasion of

(1) Any transfer on sale (*a*) of the fee simple of the land, or of any interest (*b*) in the land, or the grant of any lease (*c*) of the land for a term of fourteen years or more (*d*);

(2) The death of any person, where the fee simple of the land or any interest in the land is property passing on the death of

(*l*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 2 (1). For the meaning of "site value" and "original site value," see p. 549, *ante*. An original site value calculated on the consideration for a transfer on sale or mortgage of the land or an interest in the land which took place at any date within twenty years prior to the 30th April, 1909, or at any date between the 29th April, 1909, and the passing of the Finance (1909-10) Act, 1910 (29th April, 1910), or at any date subsequent to the passing of that Act if in pursuance of a contract made before the commencement of the Act, or on the consideration for a transfer on sale made, at any time previous, to the person who was owner at the time application is made to have the value substituted, may be substituted for the site value as fixed at the general valuation of the land (*ibid.*, s. 2 (3), as amended by the Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 2), and by the Finance Act, 1912 (2 & 3 Geo. 5, c. 8), s. 10).

(*a*) The transfer on sale of any separate tenement, flat, or dwelling in a building used for the purpose of separate tenements, flats, or dwellings is not an "occasion" (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 11). As increment value duty is a stamp duty (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 3 (6)), it is submitted that this expression bears the same meaning as in the Stamp Acts, as to which see pp. 700 *et seq.*, *post*.

(*b*) An "interest" in relation to land is defined as including any undivided share in a fee simple in possession and a reversion expectant on the determination of a lease, but as not including any other interest in expectancy, or an incumbrance, or a fixed charge, or any purely incorporeal hereditament, or any leasehold interest under a lease for a term of years not exceeding fourteen (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 41). The grant of a lease of any such separate tenement, flat, or dwelling as is referred to in note (*a*), *supra*, is not an "occasion" (*ibid.*, s. 11). In legal understanding it "extendeth to estates, rights and titles that a man hath of, in, to, or out of lands" (Co. Litt. 345 b); and see titles LANDLORD AND TENANT, Vol. XVIII., p. 372, note (*d*); SALE OF LAND. An interest in land must be such as to affect the land directly (*Attree* v. *Hawe* (1878), 9 Ch. D. 337, C. A.). A reversion expectant on the determination of a lease of which ninety-nine years are unexpired is not an interest for the purposes of the charge of increment value duty (Commissioners' Rules under the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 3 (2), (3); r. 1 (6) (Stat. R. & O., 1910, p. 395). For definitions of "incumbrance" and "fixed charge," see note (*d*), p. 550, *ante*.

(*c*) A lease includes an underlease and an agreement for a lease or underlease, but does not include a term of years created solely for the purpose of securing money until the term becomes vested in some person free from an equity of redemption (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 41). In the case of copyhold land held for a life or lives, or for years where the tenant has not a right of renewal, the copyholder's interest is regarded as a leasehold interest (*ibid.*, s. 40 (2)). As to leases generally, see title LANDLORD AND TENANT, Vol. XVIII., pp. 331 *et seq.*

(*d*) The term of a lease includes any period for which it may be renewed in pursuance of an enforceable covenant for renewal contained in the lease itself (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 41). As to what covenants for renewal are enforceable, see title LANDLORD AND TENANT, Vol. XVIII., pp. 461 *et seq.*

the deceased within the meaning of the statutes imposing estate duties (*e*); and

(3) Where the fee simple of the land, or an interest in the land, is held by any body corporate or unincorporate (*f*) in such a manner or on such permanent trusts that the land or interest is not liable to death duties, on the 5th April, 1914, and in every subsequent fifteenth year (*g*).

(iii.) *Assessment and Collection of the Duty.*

Presentation of particulars.

1092. On the occasion of a transfer on sale of land or of a statutory interest in land (*h*), or on the grant of a lease (*i*) for a term of fourteen years or more, the transferor or lessor (*k*), as the case may be, or the secretary or other accountable officer (*l*) of the body, where the land is held by a body corporate or unincorporate, must present to the Commissioners of Inland Revenue the instrument or reasonable particulars of the instrument by which the transfer or lease is effected or agreed to be effected (*m*).

(*e*) See title ESTATE AND OTHER DEATH DUTIES, Vol. XIII., pp. 183 *et seq.* The passing on death of a lease of any such separate tenement, flat, or dwelling as is referred to in note (*a*), p. 558, *ante*, is not an "occasion" (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 11).

(*f*) The expression "body unincorporate" is defined by the Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 12; see note (*k*), p. 734, *post*). The definition is adopted for the purposes of the charge of the duties on land values by the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 6.

(*g*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 1, 6. Duty on any such periodical occasion (see *ibid.*, s. 6) is not payable by such a body where the interest held by it is only a leasehold interest in any such separate tenement, flat, or dwelling (*ibid.*, s. 11).

(*h*) See definition of "interest," note (*b*), p. 558, *ante*.

(*i*) Including an agreement for a lease or an underlease, see note (*c*), p. 558, *ante*. In the case of an agreement for a transfer to be followed shortly by a conveyance, the statutory regulations do not require the agreement to be presented, but they do require it in the case of an agreement for a lease (Commissioners' Rules under the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 4; r. 7; (Stat. R. & O. 1910, p. 389)).

(*k*) "Lessor" includes an underlessor and the person entitled for the time being to the reversion, whether freehold or leasehold, expectant on the determination of the lease; but it does not include any person who joins in the execution of the instrument by which the lease is effected for the purpose of conveying an estate vested in him as a trustee or an incumbrancer, or of acknowledging the receipt of the consideration money, or of giving consent. The expression "transferor" does not include a person who joins in the execution of an instrument of transfer for a similar purpose (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 41).

(*l*) "Accountable officer" means every chamberlain, treasurer, bursar, receiver, secretary or other officer, trustee or member of a body corporate or unincorporate, by whom the annual income or profits of property in respect whereof corporation duty is chargeable is received, or in whose possession, or under whose control, the same may be (Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 12; which appears to be incorporated by the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 6 (2), (3)). As to "corporation duty," see pp. 734 *et seq.*, *post*.

(*m*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 4 (2). But presentation is not required where the property leased is a separate tenement, flat, or dwelling in a building used for such flats, separate tenements, or dwellings, or on the transfer on sale of any such lease, or where the Commissioners have made arrangements for obtaining the necessary particulars through any registry of lands, deeds, or title (*ibid.*, ss. 4 (5), 11).

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Penalty for failure to present particulars.

The Commissioners may make regulations as to the mode in which any instrument or particulars are to be presented to them (*n*), and if a transferor, lessor, or accountable officer, as the case may be, fails to present the instrument or particulars in accordance with such regulations, he is liable on summary conviction to a fine not exceeding £10, and to pay interest at the rate of £5 per cent. per annum on any duty ultimately found payable by him as from the date on which the instrument has been executed (*o*).

Assessment on (i.) transfer of fee simple;

1093. Where the occasion is the transfer of the fee simple of the land, the site value of the land on the occasion is to be calculated from the consideration for the transfer taken as the total value of the land (*p*).

(ii.) grant of lease on transfer of interest less than fee simple.

Where the occasion is the grant of any lease of the land or the transfer on sale of any interest less than the fee simple in the land, the value of the fee simple is first to be ascertained on the basis of the consideration for the grant or transfer, and the value thus found is taken as the total value (*q*).

If on any sale or grant of a lease the consideration for the transfer or lease is a periodical money payment, the Commissioners may assess the consideration at such sum as appears to them to be the capital value of the payment (*r*); and, where part of the

(*n*) These have been made in No. 665 of Stat. R. & O., 1910, p. 389.

(*o*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 4 (2). An appeal lies to quarter sessions against a conviction under this provision. As to appeals to quarter sessions, see title MAGISTRATES, Vol. XIX., pp. 642 *et seq.* The furnishing of any false statement with reference to any duty under the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), is made an offence punishable on summary conviction with six months' imprisonment under *ibid.*, s. 94. As to proceedings in courts of summary jurisdiction, see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.* As to liability where the particulars furnished are inaccurate through carelessness or neglect without fraud, see *A.-G.* v. *Till*, [1910], A. C. 50. Proceedings for the recovery of the penalty can only be commenced by order of the Commissioners, and must be taken in the name of an official or in the name of the Attorney-General (Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 21 (1)). No time is fixed either by the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), or by the statutory regulations, on the expiration of which failure to present the instrument on the particulars would render the transferor or lessor liable to the penalty.

(*p*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 2 (2) (a). For the deductions to be made from total value in order to arrive at the site value, see pp. 550, 551, *ante*.

(*q*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 2 (2) (b). No claim to be allowed a deduction for the purpose of ascertaining the site value can be admitted if it is one which might have been, but was not, made when the original site value of the land was being ascertained (*ibid.*, s. 14). For the deductions to be made from total value to arrive at the site value, see pp. 550, 551, *ante*.

(*r*) The following decisions under the Stamp Act, 1891 (54 & 55 Vict. c. 39) (see pp. 700 *et seq.*, *post*), seem to be applicable here:—The consideration for the sale may be in whole or in part a debt due to the purchaser (*Scottish Equitable Life Society* v. *Inland Revenue Commissioners* (1894), 32 Sc. L. R. 77); and, even if the debt is a bad debt, the whole is to be included in the consideration (*Inland Revenue Commissioners* v. *North British Rail. Co.* (1901), 4 F. (Ct. of Sess.) 27). The rent payable on an assignment of leaseholds is not ordinarily consideration for the sale (*Swayne* v. *Inland Revenue Commissioners*, [1900] 1 Q. B. 172, C. A.); but where land subject to tithe was sold in consideration of a lump sum and an annual

consideration consists of a covenant or undertaking to discharge any incumbrance, or a lease has been granted at a nominal rent subject to any covenant to erect buildings or to expend any sums on the property, they may add to the consideration for the transfer or grant such sum in respect of the covenant or undertaking as they think just (*s*).

Assessment on death.

1094. Where the occasion is a death, the increment duty then chargeable is collected as if it were estate duty (*t*); but where any land or an interest in land is property passing to the personal representative by virtue of his office (*u*), such representative must deliver an account setting forth the particulars of the increment value in respect of the property (*a*). On the occasion of a death and when the fee simple is property passing on such death, the site value is to be calculated from the principal value of the land as ascertained for the purposes of estate duty, such principal value being the market price of the land at the death of the deceased, subject to a special deduction on account of any depreciation in value arising by reason of the death (*b*); and, where any interest in the land is property passing on the death, the site value is to be calculated from the value of the fee simple of the land on the basis of the principal value of the interest as so ascertained (*c*).

Increment value duty payable by corporate or unincorporate bodies.

1095. In the case of increment value duty chargeable in respect of land or an interest in land held by a body corporate or unincorporate, the site value in this case being calculated with reference to the statutory "total value" of the land (*d*), the duty is assessed upon the account delivered under the Customs and Inland Revenue Act, 1885 (*e*), in the year 1914 and in every subsequent fifteenth year. The account sent in for the purposes of the charge of corporation duty in these years must contain particulars of the increment value of the land as on the preceding 5th April (*f*).

payment to vendors and their assigns who undertook to pay the tithe, the annual payment was held to be part of the consideration (*Martin* v. *Inland Revenue Commissioners* (1904), 91 L. T. 453). The consideration may consist of, *inter alia*, the amount of the debts, liabilities and expenses of the vendor (*Lord Advocate* v. *Irvine Water Board* (1905), 13 Scots Law Times, 582). It may include money payable contingently if the sum payable is ascertainable (*Underground Electric Railways* v. *Inland Revenue Commissioners*, [1906] A. C. 21).

(*s*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 32. For the analogous provision for the ascertainment of the total value of land at the time of the grant of a lease for the purposes of the charge of reversion duty, see p. 572, *post*. The determination of the Commissioners may be appealed against; see p. 582, *post*.

(*t*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 5. As to estate duty, see title ESTATE AND OTHER DEATH DUTIES, Vol. XIII., pp. 183 *et seq.*

(*u*) *Re Hadley* (1908), 25 T. L. R. 44, C. A.

(*a*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 5.

(*b*) *Ibid.*, ss. 2 (2) (c), 60 (2).

(*c*) *Ibid.*, s. 2 (2) (c). For the deductions to be made from total value to arrive at the site value, see pp. 550, 551, *ante*.

(*d*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 2 (2) (d). For the deductions to be made from total value to arrive at the site value, see pp. 550, 551, *ante*.

(*e*) 48 & 49 Vict. c. 51, s. 15; see p. 562, *post*.

(*f*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 6 (2). An

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Where such an account is due, the body and the accountable officer wilfully neglecting to send it in are liable to a penalty equal to 10 per cent. upon the amount of the duty payable on the property (*g*).

Penalty for default in rendering account.

When it is sent in, the Commissioners are required to assess the duty on it, but they may before doing so call for the production of any books or documents necessary to enable them to verify the accounts (*g*).

Powers of Commissioners.

Deductions from increment value.

1096. When the increment value of the land has been ascertained, deductions are allowed from the total amount of (1) a sum equal to 10 per cent. of the site value of the land on the last preceding occasion for the collection of increment value duty, or equal to 10 per cent. of the original site value of the land if no occasion for collection of the duty has previously arisen (*h*); and (2) any sum or sums paid to a rating authority (*i*) in respect of any increase in the value of the land due to any improvements made or any other action taken by the authority (*j*).

Duty payable on devolution of absolute interest.

1097. The charge for increment value duty is raised on the net increment value thus arrived at, and from this charge all sums paid or deemed to have been paid for duty on previous occasions are deducted. This net charge is the duty payable on the occasion of the transfer on sale or passing on death of the fee simple of any land, or on any periodical occasion in the case of the fee simple of land held by a body corporate or unincorporate (*k*).

Duty payable on devolution of partial interest.

1098. In the case of the grant of a lease or the transfer on sale or passing on death of an interest less than the fee simple, or on

account must be sent in for increment value duty even where no account is required from the body corporate or unincorporate in those years because of its exemption from corporation duty (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 6 (2)). For exemptions from corporation duty, see pp. 735, 736, *post*. But no account for increment value duty need be sent in on any periodical occasion on which no duty falls to be collected (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 6 (5)). For the bodies exempted from increment value duty, see pp. 567, 568, *post*.

(*g*) Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 18; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 6 (3). The increment value duty cannot be assessed unless the account is sent in (*Re New University Club's Estate Duty* (1887), 18 Q. B. D. 720); but the Commissioners may compel the delivery of an account by the defaulting official or body; see Crown Suits, etc. Act, 1865 (28 & 29 Vict. c. 104), s. 55.

(*h*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 3 (5). But no remission is made under this head which would make the increment value on which duty was remitted during the preceding period of five years exceed 25 per cent. of the site value on which the allowance is calculated (*ibid.*).

(*i*) "Rating authority" means any body which has power to raise a rate or administer money raised by a rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of an assessment in respect of the yearly value of property (*ibid.*, s. 35 (2)).

(*j*) *Ibid.*, s. 36. The increment value duty on the amounts allowed under both these heads is, for the purpose of the collection of the duty on subsequent occasions, deemed to have been paid (*ibid.*, ss. 3 (5), 36).

(*k*) *Ibid.*, s. 3 (1), (2). Where the occasion is the passing on death of settled land in which the deceased or any other person had an interest ceasing on the death of the deceased, increment value duty is collected as for an interest corresponding to that which is the subject of the settlement (*ibid.*, s. 3 (4)).

any periodical occasion in the case of such an interest held by a body corporate or unincorporate, such a proportion of the duty is payable as the interest which is the subject of the charge bears to the whole fee simple of the land (*l*).

Proportionate payment.

The Commissioners may make rules to determine this proportion (*m*), and they may in charging the duty on any occasion make such allowances as they think just in respect of any payment of reversion duty, where the benefit on which reversion duty was paid is shown to them to be identical with the increment value on which increment value duty is charged (*n*).

Rate of duty.

1099. Increment value duty is collected as a stamp duty at the rate of £1 for every complete £5 of increment value chargeable (*o*).

(iv.) *Recovery of the Duty.*

Parties liable.

1100. Where the occasion of charge is the transfer on sale of land or the grant of a lease of land, the duty is payable by the transferor or grantor as the case may be, and any contract for the payment by the transferee or lessee of the duty, or of any expenses incurred in connection with the payment or assessment of duty, is void (*p*).

When liable.

The duty is assessed on the presentation of the instrument of transfer or lease and becomes a debt due to the Crown from the transferor or lessor (*q*). Any duty so assessed is, for the

(*l*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 3 (3). The amount of increment value duty to be collected on the occasion of the grant of a lease or transfer on sale or passing on death, of any interest in land, or on any periodical occasion in the case of an interest in land held by a body corporate or unincorporate, is one-fifth of the increment value of the land after deducting from that one-fifth one-fifth of the increment value on the last occasion (if any) on which duty was paid in respect of the interest under review (Commissioners' Rules under the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 3, r. 3 (1) (Stat. R. & O., 1910, p. 395)).

(*m*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 3 (3). By these rules the proportion is defined as "the ratio of the present value of an annuity for the term of the interest under review to the present value of the same annuity in perpetuity" (Commissioners' Rules under the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 3, r. 1 (1) (Stat. R. & O., 1910, p. 395)). The "term of the interest" means: (a) Where the interest is an interest in possession, a term equal to the residue of the interest for the time being outstanding; and (b) where it is a reversion expectant on the determination of a lease, a term equal to the term of the reversion deferred for the period of the outstanding term of the lease (*ibid.*, r. 1 (2)). The calculations for the purpose of ascertaining the proportion are based on the 4 per cent. tables for the purchase of leases, estates, and annuities (*ibid.*, r. 1 (4)).

(*n*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 14 (4). A corresponding allowance is made on the assessment of reversion duty in respect of any part of the value of the benefit chargeable which was already charged with increment value duty; see p. 572, *post*.

(*o*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 1, 3 (6).

(*p*) *Ibid.*, s. 4 (1), as amended by the Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 1.

(*q*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 4 (4). The Commissioners may require security to be given for the payment of the duty, and, where such security is required and not furnished, the instrument will not

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purposes of future collection of the duty, deemed to have been paid (*r*).

Instrument not duly stamped.

1101. An instrument which is required to be stamped with the increment duty stamp is not regarded as duly stamped within the meaning of the Stamp Act, 1891 (*s*), unless it bears the appropriate duty stamp indicating that it has been presented for assessment of the duty (*t*).

Payment by instalments.

1102. The Commissioners may make regulations for the payment by instalments of the duty payable in the case of any lease or transfer on sale, where the consideration is in the form of a periodical payment, and these regulations must provide for the remission of any instalment which has not fallen due at the time the lease is determined (*a*).

Repayment of duty.

1103. Where any duty has been paid, and the transaction in respect of which it was paid has subsequently not been carried

be stamped with the increment value duty stamp (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 4 (3); Commissioners' Rules under the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 4, rr. 14, 16 (Stat. R. & O., 1910, p. 389)).

(*r*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 4 (4). But this does not apply where duty paid has been repaid because of the transaction in respect of which it had been paid not having been carried into execution, or where the duty being payable by instalments on the grant of a lease the lease is determined before all the instalments have fallen due (*ibid.*, s. 4 (5), (6)).

(*s*) 54 & 55 Vict. c. 39, s. 14; see pp. 700 *et seq.*, *post.*

(*t*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 4 (3).

(*a*) *Ibid.*, s. 4 (5). The regulations (see Commissioners' Rules under *ibid.*, s. 4 (Stat. R. & O., 1910, p. 389), r. 16) provide that in such a case the Commissioners may, if they think fit, allow payment of the duty assessed to be made by instalments in accordance with the following rules:—

1. Where the consideration consists wholly of a periodical payment, the duty is payable by five equal annual instalments, and the first instalment falls due one year after the date of the grant of the lease or the transfer of the interest, and the subsequent instalments on the same date in each successive year.

2. Where the considerations consist partly of a lump sum payment and partly of a periodical payment:

(1) At the date of the grant or transfer an amount is payable bearing to the whole duty to be collected the same proportion as the lump sum bears to the present total value of the consideration calculated on the 4 per cent. tables.

(2) The balance is payable by instalments of the same amounts and at the same times as if the periodical payment constituted the whole of the consideration, and the balance were the whole of the duty to be collected.

3. In any case in which the person liable to the payment of the duty may and does elect to pay it by instalments, he must furnish security to the satisfaction of the Commissioners for the payment of the whole amount of the duty payable.

4. If any person, on being required by the Commissioners to furnish such security, fails to do so within two months, he forfeits his right to pay the duty by instalments and the whole of the duty is deemed to be due on the expiration of two months from the date on which notice was given by the Commissioners of their requirement.

5. If any instalment remains unpaid for a period of thirty days after it falls due, or if the person liable to the payment dies or becomes bankrupt, the whole balance of the duty becomes forthwith due and payable.

into execution, the transferor or lessor may within two years after payment apply to have the duty repaid (*b*).

Out of what property duty is payable.

1104. Where the occasion of charge is the passing on death of the land, and it passes to the personal representative as such (*c*), the duty is payable out of the interest in the land in exoneration of the rest of the deceased's estate (*d*). In the case of land not so passing, the duty is payable by the person or persons beneficially entitled (*e*). Except as against the land on which the duty is assessed, the Crown's claim for the duty ranks *pari passu* with the claims of the other creditors of the deceased (*f*).

Duty payable by body corporate or unincorporate.

1105. The duty assessed periodically in respect of land held by a body corporate or unincorporate is payable by the body or by the accountable officer (*g*), and the latter may retain any duty paid by him from any property of the body which comes into his hands. Every body and every accountable officer of a body who wilfully neglects, for the space of twenty-one days after it becomes payable, to pay any duty is liable to a penalty of 10 per cent. on the amount of the unpaid duty and a like penalty for every month thereafter that the neglect continues (*h*). The duty is payable immediately after assessment, but, if the body corporate or unincorporate so desire, it may be paid by fifteen equal yearly instalments (*i*).

(v.) *Exemptions.*

Exemptions from increment value duty: Crown lands.

1106. The duty is not charged on the following classes of land :—

(1) Land or any interest in land held by or in trust for His Majesty or any department of Government, and including any part of the increment value of any land which a statutory company is required under the provisions of any lease or agreement to pay over to His Majesty or to any person on behalf of His Majesty or of any department of Government (*k*);

(*b*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 4 (6). The application must be in writing and accompanied by a statutory declaration setting forth the circumstances under which the repayment is claimed. In case of payment by instalments, the two years begin to run from the date on which the last instalment was paid (Commissioners' Rules, made under *ibid.*, s. 4 (Stat. R. & O., 1910, p. 389), r. 17).

(*c*) That is, in his character as executor; see title ESTATE AND OTHER DEATH DUTIES, Vol. XIII., pp. 219, 220.

(*d*) And not, as in the case of leaseholds passing to the executor, out of the residuary personal estate; see *Re Culverhouse, Cook* v. *Culverhouse*, [1896] 2 Ch. 251; and see title ESTATE AND OTHER DEATH DUTIES, Vol. XIII., p. 219.

(*e*) *Berry* v. *Gaukroger*, [1903] 2 Ch. 116, C. A.; and see title ESTATE AND OTHER DEATH DUTIES, Vol. XIII., p. 221.

(*f*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 5.

(*g*) *Ibid.*, s. 6 (3), embodying the Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), ss. 16, 18. The duty is a first charge on all the property of the body in respect whereof it is payable (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 6 (3)), embodying the Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51, s. 14).

(*h*) Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 17 (2).

(*i*) And notwithstanding that the assessment may be appealed against (Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 18 (3); Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 6 (3)).

(*k*) See Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 10 (1);

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(2) Land or any interest in land held by or on behalf of a rating authority, or any statutory combination representative of two or more local or rating authorities (*l*);

Rating authorities.

Agricultural land.

(3) Agricultural land, so long as the land has no higher value than its value for agricultural purposes only, but treating as value for agricultural purposes any value of the land for sporting purposes or other purposes dependent on its use as agricultural land, except where the value for these other purposes exceeds the agricultural value (*m*);

Small farms.

(4) Any agricultural land which immediately before the occasion for charge and for twelve months previously has been occupied and cultivated by the owner (*n*), and the total extent of which, together with any other land belonging to the same owner, does not exceed fifty acres, and where the average total value (*o*) of the whole land owned does not exceed £75 per acre; but this exemption does not extend to land which is occupied with a dwelling-house assessed to income tax under Schedule A at more than £30 (*p*);

Dwelling-houses.

(5) Land which is the site (*q*) of a dwelling-house, and which immediately before the occasion for charge and for twelve months

Revenue Act, 1911 (1 Geo. 5, c. 2), s. 6; *Coomber* v. *Berks Justices* (1883), 9 App. Cas. 61; *Brown* v. *Smith* (1901), 39 Sc. L. R. 20. The duty which would have been chargeable if the land were held by a private individual is, for the purposes of the collection of duty on future occasions, deemed to have been paid (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 10 (1); Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 6). The exemption does not extend to the private estates of the Sovereign (Crown Private Estates Act, 1862 (25 & 26 Vict. c. 37), s. 8; Crown Private Estates Act, 1873 (36 & 37 Vict. c. 61), s. 1); and see title CONSTITUTIONAL LAW, Vol. VII., pp. 276, 277.

(*l*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 35 (1). For definition of "rating authority," see note (*i*), p. 562, *ante*. The increment value duty which, but for the exemption, would have been payable, is, for the purposes of the collection of the duty on future occasions, deemed to have been paid (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 35 (1)). Notwithstanding the exemption granted to land held by a rating authority, the regulations of the Commissioners require that, on any conveyance on sale or lease for a term exceeding fourteen years of the land, the instrument of transfer or grant shall be presented for stamping; see p. 560, *ante*.

(*m*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 7; and for a definition of "agriculture," see note (*q*), p. 551, *ante*. The other purposes referred to would, it is submitted, cover any cultivation of the land otherwise than for a profit in the ordinary course of husbandry; see *Meux* v. *Cobley*, [1892] 2 Ch. 253; *Bruce* v. *Burton* (1900), 4 Tax Cas. 399; see, further, note (*t*), p. 567, *post*.

(*n*) For the definition of "owner," see Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 41; and see note (*c*), p. 554, *ante*. In the application of the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 8, "owner" includes a person holding land under a lease which was originally granted for fifty years or more. But where exemption is granted to an owner as so defined, this does not extend to prevent the collection of the duty so far as it is payable in respect of any other interest in the land (*ibid.*, s. 8 (4) (a)).

(*o*) For definition of "total value," see p. 550, *ante*.

(*p*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 8 (2); and see title INCOME TAX, Vol. XVI., pp. 619 *et seq.*; see, further, note (*t*), p. 567, *post*.

(*q*) The "site" includes any offices, courts and yards, and gardens not exceeding one acre in extent occupied together with the dwelling-house (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 8 (4) (b)).

previously has been occupied by the owner (*r*) as his residence, and provided the annual value of the house as assessed to income tax (*s*) does not exceed in the case of a house—(a) situated in the Administrative County of London, £40; (b) situated in a borough or urban district with a population according to the last published census of 50,000 or upwards, £26; (c) situated elsewhere, £16 (*t*);

Statutory companies.

(6) Land held by a statutory company (*a*) for the purposes of its undertaking, which cannot be appropriated by the company except to these purposes (*b*); but the duty which might but for this exemption have been charged is not deemed to have been paid (*c*). If the company is under its lease or agreement required to pay over any part of the increment value to His Majesty or any Government department, the increment value is regarded as arising in respect of land held by the Crown (*d*);

Charities.

(7) Land, or any interest in land, held by or on behalf of any governing body constituted for charitable purposes (*e*), in

(*r*) For definition of "owner," see note (*c*), p. 554, *ante*, which in this case also includes a person holding under a lease originally granted for a term of fifty years or more; but here, too, if exemption is granted to a person holding under such a lease, a person liable on account of any other interest held in the land continues liable to pay the duty corresponding to his interest (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 8 (4)). A reversion expectant on the determination of a lease of which ninety-nine years are unexpired is treated by the regulations of the Commissioners as not having an interest chargeable with duty (Commissioners' Rules under the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 3 (2), (3) (Stat. R. & O. 1910, p. 395), r. 1 (6)).

(*s*) See title INCOME TAX, Vol. XVI., pp. 619 *et seq.*

(*t*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 8 (1). Any duty remitted under either of the heads of exemption (3), (4), or (5) (see p. 556, *ante*, and the text, *supra*) is, for the purpose of the collection of the duty on future occasions, deemed to have been paid. Notwithstanding the exemptions granted, the Commissioners require any instrument of transfer of an interest in the land, or of a grant of a lease for a term exceeding fourteen years, to be presented to them for stamping (Commissioners' Rules under the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 4 (Stat. R. & O. 1910, p. 389), r. 10).

(*a*) A "statutory company" means any railway company, canal company, dock company, water company, or other company for the time being authorised under any special Act to construct, work, or carry on any railway, canal, dock, water, or other public undertaking, and includes any person or body of persons so authorised (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 38 (4)).

(*b*) But the exemption covers land which is intended to be ultimately appropriated for the purposes of the company, although temporarily used for other purposes (*ibid.*, s. 38 (1)). As to lands falling within this category, see *Hooper* v. *Bourne* (1880), 5 App. Cas. 1; *Bayley* v. *Great Western Rail. Co.* (1884), 26 Ch. D. 434, C. A.

(*c*) It cannot, therefore, be claimed as a deduction when an occasion for charge of the duty arises after the land has been sold or ceases to be held by the company.

(*d*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 38; Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 6.

(*e*) Such a body includes any person or body of persons who have the right of holding, or any power of government of, or management over, any property appropriated for charitable purposes (including property appropriated for the purpose of any of the military or naval forces of the Crown), and includes any corporation sole and all universities, colleges, schools, and other institutions for the promotion of literature, science, or art (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 37 (1)). For the

SECT. 3. Increment Value Duty.

respect of the periodical charges of duty which would be payable by it every fifteenth year as a body corporate or unincorporate. The exemption applies only while the land is occupied and used for the purposes for which the body was constituted (*f*). It extends also to land, or any interest in land, held by a registered society (*g*), or by an incorporated company if the company is by its memorandum or Act precluded from dividing any profit amongst its members (*h*); or

Recreation grounds.

(8) Land, or any interest in land, held by a body corporate or unincorporate is exempt from liability to the periodical charge for increment value duty, where the land is *bonâ fide* used for the purposes of games or other recreations and without any view to the payment of a dividend or profit out of the revenue derived from it (*i*).

SUB-SECT. 2.—*As a Capital Charge on Minerals.*

(i). *Definition.*

Assessable increment value.

1107. Where minerals are liable to increment value duty as a capital charge, the assessable increment value is the amount, if any, by which the capital value of the minerals at the time when the occasion for charge arises exceeds the original capital value of the minerals (*k*).

meaning of "charitable purposes," see titles CHARITIES, Vol. IV., p. 209, note (*a*); INCOME TAX, Vol. XVI., pp. 629, 630; *Re Donald, Moore* v. *Somerset*, [1909] 2 Ch. 410; *R.* v. *Special Commissioners of Income Tax, Ex parte Essex Hall* (1911), 27 T. L. R. 466, C. A.; and see titles LITERARY AND SCIENTIFIC INSTITUTIONS, Vol. XIX., pp. 204 *et seq.*; RATES AND RATING, pp. 21, 22, *ante*. For the meaning of "appropriated for the promotion of science," see title CHARITIES, Vol. IV., p. 208.

(*f*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 37 (1).

(*g*) The term "registered society" means any society or body of persons which is registered, or whose rules are certified or registered by a registrar of friendly societies in pursuance of any Act of Parliament, and who by its rules makes provision for the benefits set out in the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 8 (1), and where the contract between the society and the member is of a permanent character (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 37 (2)). As to such registered societies, see titles BUILDING SOCIETIES, Vol. III., pp. 321 *et seq.*; FRIENDLY SOCIETIES, Vol. XV., pp. 119 *et seq.*; INDUSTRIAL, PROVIDENT, AND SIMILAR SOCIETIES, Vol. XVII., pp. 1 *et seq.*; WORK AND LABOUR.

(*h*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 37 (2).

(*i*) *Ibid.*, s. 9. In this case the Commissioners must be satisfied that the land is used for games or other recreations under some agreement with the owner which as originally made could not be determined for a period of at least five years, or under other circumstances which render it probable that the land will continue to be so used. The duty remitted is not, for the purposes of the future collection of duty, deemed to have been paid (*ibid.*).

(*k*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 23 (1). For definitions of "capital value" and "original capital value," see p. 552, *ante*. The assessable capital value may be the full value of the minerals where the proprietor of the minerals in his return made for the purposes of their valuation did not specify the nature of the minerals and give an estimate of their capital value (*ibid.*, s. 23 (2)). The duty is not chargeable upon minerals which are the subject of a mining lease or are being worked (*ibid.*, s. 23 (2) (3)). For definition of "minerals," see note (*e*), p. 579, *post*. As to the severance of minerals from the ownership of the surface, see title MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 506, 550.

(ii.) *Occasions of Charge.*

Occasions.

1108. The duty is to be collected on the same occasions as in the case of ordinary land (*l*), except that the grant of a mining lease is not an occasion on which the duty is to be charged (*m*).

(iii.) *Assessment and Collection of the Duty.*

Assessment and collection.

1109. The duty is assessed and collected at the same rate as in the case of the corresponding charge on land, and subject to the same provisions as to deductions, allowances, abatements and exemptions (*n*).

SUB-SECT. 3.—*As an Annual Charge on Minerals* (*o*).

(i.) *Definition.*

Nature of the charge.

1110. Annual increment value duty is the charge levied on the amount, if any, by which the rental value of the right to work minerals and of the mineral wayleaves in the preceding working year exceeds two twenty-fifth parts of the original capital value of the minerals, or, where increment value duty as a capital sum has been collected on the minerals, exceeds two twenty-fifth parts of the capital value of the minerals on the last occasion on which the duty was so collected (*p*).

Exemptions.

It is not chargeable on minerals which, on the 30th April, 1909, were the subject of a mining lease or were being worked by the proprietor, or on minerals which are not the subject of a mining lease or being worked (*q*).

(*l*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 1, 23 (2); and see pp. 558, 559, *ante*.

(*m*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 22 (1).

(*n*) *Ibid.*, ss. 1, 23 (2); and see pp. 564 *et seq.*, *ante*.

(*o*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 23 (4).

(*p*) *Ibid.*, s. 22 (3). Where the minerals are the subject of a mining lease, the rental value is the amount of rent paid by the working lessee in respect of the right to work the minerals, or in respect of the wayleave, in the last working year (*ibid.*, s. 20 (2); and see *Beaufort* (*Duke*) v. *Inland Revenue Commissioners*, [1912] 2 K. B. 281). But if the lessor is liable under any Act to pay any sum in respect of rates, the rental value is to be taken as what the rent would be if the lessee were liable for the rates instead of the lessor (Finance Act, 1912 (2 & 3 Geo. 5, c. 8), s. 11 (1)). Where the minerals are worked by the proprietor, the rental value is the sum which would have been obtained by him in the last working year if the right to work the minerals had been leased to a working lessee for a term and at a rent and on conditions customary in the district, and they had been worked to the same extent and in the same manner as they were worked in the year by the proprietor (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 20 (2)). The rent is to be taken on the basis of the lessee paying all rates in respect of the minerals, notwithstanding that the proprietor would have been liable to pay the rates or some part thereof (Finance Act, 1912 (2 & 3 Geo. 5, c. 8), s. 11 (2)). If the rent paid exceeds the rent customary in the district, and partly represents a return on expenditure incurred by the proprietor which would ordinarily be borne by the lessee, the Commissioners may, in assessing the duty, make an allowance for this (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 20 (2)). The working year means the year ending the 30th September (*ibid.*, s. 24). For definition of "capital value," see p. 552, *ante*.

(*q*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 22 (2), (3). But the exemption granted to minerals leased or worked on the 30th April, 1909, does not apply where the minerals have since that date ceased

SECT. 3.
Increment Value Duty.

(ii.) *Assessment and Collection of the Duty.*

Returns to Commissioners.

1111. The assessment is made on a return which is required to be furnished to the Commissioners by every proprietor (*r*) of minerals and by every person to whom any rent is paid in respect of the minerals, setting forth the rent paid by the working lessee (*s*), or, where the proprietor himself works the minerals, the rate of rent and royalty customary in the district (*t*).

Deduction from rental value.

Before the charge for duty is assessed on the rental value returned, a deduction is made of any part of this value which can be shown to represent a return for money expended within fifteen years by a lessor in boring or otherwise proving the minerals (*a*).

Rate of duty.

1112. The duty is charged at the rate of £1 for every complete £5 of increment value remaining after this deduction has been made, and is payable at any time after the 1st of January in the year for which it is charged (*b*).

(iii.) *Recovery of the Duty.*

Persons liable.

1113. As soon as assessed, the duty becomes a debt due to the Crown from the proprietor of the minerals if the minerals are worked by the proprietor, and in any other case from the immediate lessor of the working lessee (*c*). But if the lessor who pays the duty is himself only a lessee of the right to work the minerals or of the wayleave, he is entitled to deduct from the rent paid by him

for a period exceeding two years to be the subject of a mining lease or to be worked (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 22 (2), (3)).

(*r*) "Proprietor" means the person for the time being entitled in possession to the minerals, or to the rents and profits thereof, or any part of these rents and profits, but it does not include a person entitled as lessee other than a person entitled to the possession of land comprised in a lease for any long term of years to which the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 65 (as to which see title REAL PROPERTY AND CHATTELS REAL, p. 268, *ante*), applies (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 24). No deduction may be made in respect of super-tax (*Beaufort (Duke)* v. *Inland Revenue Commissioners*, [1912] 2 K. B. 281).

(*s*) The "working lessee" is the person who is actually working the minerals, or who would have the right actually to work the minerals if the minerals were worked. As respects wayleaves the term means the person who is in actual enjoyment of the wayleave (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 24); for definition of "wayleave," see note (*l*), p. 580, *post*.

(*t*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 20 (3), and form of notice and return issued by the Commissioners. Failure to furnish the return when called upon to do so involves liability to a penalty not exceeding £50, recoverable in the High Court (*ibid.*). Knowingly making a false return under the Act involves liability on summary conviction to six months' imprisonment with hard labour (*ibid.*, s. 94). As to liability when the return furnished is incorrect owing to neglect or carelessness, see *A.-G.* v. *Till*, [1910] A. C. 50.

(*a*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 22 (4); and see note (*p*), p. 569, *ante*.

(*b*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 1, 20 (4). That is, the financial year ending the 31st March (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 22.

(*c*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 20 (4), 22 (5). As between the lessor and the lessee, the duty must be paid by the former, notwithstanding any contract to the contrary (*ibid.*).

to his lessor an amount equal to the duty calculated on the rent payable by him (*d*).

SECT. 4.—*Reversion Duty.*

SUB-SECT. 1.—*Definition.*

Nature of duty.

1114. Reversion duty is a duty chargeable on the value of the benefit deemed to accrue to a lessor by reason of the determination of a lease (*e*).

SUB-SECT. 2.—*Assessment and Collection of the Duty.*

Liability of accounting party.

1115. On the determination of a lease on the determination of which reversion duty is payable, an account of the benefit accruing to him from the determination must be sent to the Commissioners by the person in whom the lessor's interest was vested immediately before the expiration of the term for which the lease was granted, or, if the lease had determined before that time, immediately before the transaction or event in consequence of which the lease had determined (*f*). If any person who is under an obligation to send in such an account knowingly (*g*) fails to do so within a period of three months of the determination of the lease, he becomes liable to pay to the Crown a sum not exceeding 10 per cent. upon the amount of duty payable, and a like penalty for every three months after the first month during which the failure continues (*h*). If an account is not sent in, the Commissioners may cause one to be

(*d*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 21 (1). A contract that the rent shall be paid without allowing such a deduction is void so far as respects the provision dealing with the deduction (*ibid.*, s. 21 (2); *Gaskell* v. *King* (1809), 11 East, 165; *Tinckler* v. *Prentice* (1812), 4 Taunt. 549; see title LANDLORD AND TENANT, Vol. XVIII., p. 476). A lessor refusing to allow a deduction on account of duty paid is liable to a penalty not exceeding £50, recoverable in the High Court (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 21 (3)). If the immediate lessor has paid duty on a reduced assessment he is only entitled to claim a deduction from the rent payable by him to his lessor adjusted to correspond to the proportion borne by the rent he pays to the sum on which he was assessed (*ibid.*, s. 21 (1), (4)).

(*e*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 13; and for definition of "lease," see note (*c*), p. 558, *ante*. If the determination of the lease is brought about with a view to renewal and in pursuance of a covenant to renew contained in the lease, so that the term of the lease includes the period for which it may be renewed, the original lease on its renewal is not regarded as having been determined (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 41).

(*f*) *Ibid.*, s. 15 (2), as amended by the Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 3 (1). This is the person who, for the purposes of the charge of the duty, is regarded as the lessor. For a definition of "lessor" for the general purposes of Part I. of the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), imposing the duties, see note (*k*), p. 559, *ante*.

(*g*) That is, with knowledge of the facts upon which contravention depends (*Burton* v. *Bevan*, [1908] 2 Ch. 240). As to guilty knowledge generally, see title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 233 *et seq.*

(*h*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 15 (3). These penalties may be recovered in the High Court by order of the Commissioners, or by suit in the name of the Attorney-General (Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 22). The court has no power to modify or remit the penalties (*Lord Advocate* v. *M'Laren* (1905), 42 Sc. L. R. 762).

SECT. 4. Reversion Duty.

taken by any person or person appointed by themselves for that purpose (*i*).

Assessment of benefit.

1116. When the account has been obtained, an assessment is made of the benefit accruing to the lessor. This is taken as the amount, if any, by which the total value of the land at the time the lease determined exceeds the total value of the land at the time of the original grant of the lease (*k*).

Value at time of grant of lease.

The value at the time of the grant is ascertained on the basis of the rent (*l*) reserved and payments made in consideration of the lease, including, where a nominal rent only has been reserved, the value of any covenant or undertaking to erect buildings or to expend any sums on the property (*m*).

Total value of lease at determination.

The total value at the time the lease determined is the total value as defined for the purpose of the charge of the land values duties (*n*), subject to deductions for any part of the value attributable to any works executed, or expenditure of a capital nature incurred, by the lessor during the term of the lease, and any sums payable by the lessor as compensation on the determination of the lease (*o*).

Rate of duty.

1117. The duty is assessed on the value of the benefit accruing at the rate of £1 for every complete £10 of that value (*p*).

Deductions and allowances.

1118. The sum to be collected on any occasion of charge is subject to the following deductions and allowances:—

(1) Any part of the duty which can be shown to the Commissioners to have been assessed on a benefit which is identical with an increase in value on which increment value duty has already been paid (*q*).

(2) Where a lease of any land determines on the vesting of the

(*i*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 15 (4), applying the Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 17 (1). Where the duty as assessed on the account taken by the person appointed by the Commissioners exceeds the duty assessable on the account rendered, they may charge as part of the duty any part of the expenses incurred by them in having the account taken (*ibid.*, s. 17 (2)).

(*k*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 13 (2).

(*l*) "Rent" is defined as including any yearly or other rent, toll, duty, royalty, or other reservation by the acre, the ton, or otherwise, but not any tithe or tithe rentcharge, or other periodical payment or rendering in lieu of or in the nature of tithe, or any fee farm rent, rent seck, quit rent, chief rent, rent of assize, or any other perpetual rent or annuity granted out of land (*ibid.*, s. 41, embodying the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 2 (ix.)). For the special definition of "rent" for the purposes of the charge of the duty on minerals, see note (*m*), p. 580, *post*.

(*m*) This is interpreted in practice as meaning any condition that the lessee shall lay out money in building, rebuilding, or improvements on the demised lands.

(*n*) For definition of "total value," see p. 550, *ante*.

(*o*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 13 (2).

(*p*) *Ibid.*, s. 13 (1).

(*q*) *Ibid.*, s. 14 (4). The amount of the allowance to be granted in this case is fixed by the Commissioners (*ibid.*), subject to an appeal in the usual way (*ibid.*, s. 33). As to appeals, see pp. 582 *et seq.*, *post*. A corresponding allowance is granted where increment value duty is chargeable in respect of an increase in value on which reversion duty has already been paid; see p. 563, *ante*.

lessor's interest and the lessee's interest in the same person (*r*) before the expiration of the term for which the lease was granted, such an amount as represents the difference between the full duty and the sum which, with compound interest at the rate of 4 per cent. per annum for the residue of the term for which the lease was granted, would produce the amount of the full duty (*s*).

SECT. 4. Reversion Duty.

(3) Where a reversion was mortgaged before the 30th April, 1909, and the mortgagee has foreclosed before the lease on which the reversion is expectant determines, the reversion duty payable is not to exceed the amount, if any, by which the total value of the land at the determination of the lease exceeds the amount payable under the mortgage at the date of the foreclosure (*t*).

(4) Any sum or sums paid in pursuance of any public general or local Act to any rating authority in respect of the increased or enhanced value of the land due to any improvements made or other action taken by the authority (*a*).

SUB-SECT. 3.—*Recovery of the Duty.*

1119. The duty when assessed becomes a debt due to the Crown from the lessor to whom the benefit accrues, but ranks *pari passu* with debts due to his other creditors (*b*). Crown debt

1120. Where the lessor is himself entitled to only a leasehold interest, the duty payable by him is such a sum as he would be liable to pay if the value of the benefit on which duty is calculated were reduced in proportion to the amount by which the value of his interest is less than the fee simple (*c*). Duty recoverable from leaseholder.

(*r*) It is immaterial in what way, whether by agreement between the parties or by operation of law, the union of interests is brought about.

(*s*) Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 3 (2). The "full duty" is the duty, if any, which would have become payable if the lease had not determined until the expiration of the term for which it was granted, and if the total value of the land were at that time the same as it is when the lease actually determines. If the lease contains an obligation to renew, the term of the lease is regarded as including the period for which it may be renewed. In the case of a lease for a life or lives, the term is deemed to be a number of years equal to the mean expectation of life of the person for whose life it was granted, or, in the case of a lease for lives, of the youngest of the persons for whose lives the lease was granted (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 41).

(*t*) *Ibid.*, s. 14 (5). As to the amount so payable under the mortgage, see title MORTGAGE, Vol. XXI., p. 287.

(*a*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 36; and, for the definition of "rating authority," see note (*i*), p. 562, *ante*.

(*b*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 15 (1). The "lessor" is defined, for the purposes of the charge of reversion duty, as the person in whom the lessor's interest was vested immediately before the expiration of the term for which the lease was granted, or, if the lease had determined before that time, immediately before the transaction or event in consequence of which the lease had determined (Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 3); and see p. 571, *ante*. As to the priority of the Crown in competition with other creditors of an insolvent debtor's estate, see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., pp. 247, 248. As to the recovery of Crown debts, see title CROWN PRACTICE, Vol. X., pp. 1 *et seq.*

(*c*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 13 (2).

SECT. 4. SUB-SECT. 4.—*Exemptions.*

Reversion Duty.

Determinations of leases not giving rise to claims for duty.

1121. Reversion duty is not chargeable on the determination of a lease of land where

(1) The land at the date of the determination was agricultural land (*d*);

(2) The original term of the lease did not exceed twenty-one years, or the lessor's interest is a leasehold interest not exceeding that number of years (*e*);

(3) The reversion having been purchased prior to the 30th April, 1909, the lease determined within forty years of the purchase otherwise than by an agreement, express or implied, between the lessor and lessee not contained in the lease itself (*f*);

(4) The lease was determined in pursuance of an agreement between the lessor and the lessee for the acquisition by the lessee of the lessor's interest, provided that, at the time of the determination, the lease had at least fifty years of its term to run and the total value of the land did not exceed £500 (*g*);

(5) The land being held upon trust for any body of persons, the lease was determined before the expiration of the term by its surrender to the lessor upon the terms that he should grant to those persons severally leases of various plots of land representing in the aggregate the whole of the land comprised in the original lease for a term in each case equal to the unexpired term (*h*) of the residue of the original lease, and at rents amounting in the aggregate to, but not exceeding, the rent reserved by the original lease (*i*);

(6) Land, or any interest in land, is held by or on behalf of a rating authority, or any statutory combination representative of two or more rating authorities, so far as respects the land or interest (*k*);

(7) Land, or any interest in land, is held and used for charitable purposes by or on behalf of any governing body constituted for such purposes in respect of the land or interest so held and used, and including land held by any registered society or by any incorporated body where such body by its memorandum or Act is precluded from dividing any profits amongst its members (*l*); or

(*d*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 14 (2). That is, land used in agriculture; and, for definition of agriculture, see note (*q*), p. 551, *ante*.

(*e*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 14 (2).

(*f*) *Ibid.*, s. 14 (1). Where the agreement under which the lease determined was not contained in the lease itself, the exemption is still allowed if the lease would, apart from such agreement, have determined within the period of forty years (*ibid.*).

(*g*) Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 3 (3).

(*h*) For what is included in the term of a lease, see note (*d*), p. 558, *ante*.

(*i*) Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 3 (4). In a case coming under this head of exemption, such return must be sent in to the Commissioners as is required to be sent when reversion duty is payable on the determination of a lease (*ibid.*).

(*k*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 35 (1); and, for definition of "rating authority," see note (*i*), p. 562, *ante*.

(*l*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 37. For definitions of "governing body constituted for charitable purposes" and of "registered society," see pp. 567, 568, *ante*.

(8) Land is held by a statutory company for the purposes of its undertaking and cannot be appropriated except for these purposes, although it may be temporarily used for other purposes (*m*). SECT. 4. Reversion Duty.

SECT. 5.—*Undeveloped Land Duty.*

SUB-SECT. 1.—*Definition.*

1122. Undeveloped land duty is a duty on the site value of undeveloped land. Definition.

Undeveloped land is land which has not been developed by the erection on it of dwelling-houses, or of buildings (*n*) for the purposes of any business (*o*), trade, or industry other than agriculture (*p*) (but including glasshouses or greenhouses), or is not otherwise used *bonâ fide* for any business, trade, or industry other than agriculture (*q*). It includes land which after having been developed has reverted to the condition of undeveloped land and continued in that condition for the space of a year (*r*). Undeveloped land.

SUB-SECT. 2.—*Assessment and Collection of the Duty.*

1123. The duty is assessed on the site value of the land. Up to the year 1914 this is the original site value as found on the general valuation (*s*). Assessment on site value.

From that year inclusive, the charge will be raised upon the site value found on the quinquennial valuation to be made of undeveloped land in that year, and this will continue to be the basis of charge until the next following quinquennial valuation takes place, when the new site value then found will be substituted and will form the basis until it is superseded by the site value found when the next succeeding quinquennial valuation takes place (*t*). Quinquennial valuation.

(*m*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 38; see definition of "statutory company," note (*a*), p. 567, *ante*.

(*n*) For the meaning of the term "buildings" in other connections, see titles ELECTIONS, Vol. XII., p. 185, note (*i*); HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., p. 244; METROPOLIS, Vol. XX., p. 477, note (*u*). It does not necessarily bear the same meaning here.

(*o*) "Business" means everything which occupies the time and attention and labour of a man for the purpose of profit (*Smith* v. *Anderson* (1880), 15 Ch. D. 247, C. A., *per* JESSEL, M.R., at p. 258).

(*p*) For definition of "agriculture," see note (*q*), p. 551, *ante*. The use of land for agricultural purposes does not include use as the site of glasshouses (*Smith* v. *Richmond* (1899), 4 Tax Cas. 131, H. L.).

(*q*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 16 (1), (2).

(*r*) *Ibid.*, s. 16 (2) (a). The liability ceases as soon as the land is again developed or used (*ibid.*).

(*s*) *Ibid.*, s. 16 (3). For original site value, see p. 549, *ante*. For the purpose of the assessment of land to undeveloped land duty, the land does not include minerals (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 16 (4)). This exemption extends, it is submitted, beyond the exemption granted to certain mineral substances from mineral rights duty, as to which see p. 579, *post*. It excludes from the assessment for undeveloped land duty all substances forming part of the crust of the earth other than the layer of soil which contains vegetable life; see *Glasgow (Lord Provost and Magistrates)* v. *Farie* (1888), 13 App. Cas. 657; *Great Western Railway* v. *Carpalla United China Clay Co., Ltd.*, [1910] A. C. 83).

(*t*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 16 (3), 28. Where the periodical valuation has been begun but not completed in the year of valuation, the Commissioners may complete it after the expiration of that year (*ibid.*, s. 28).

SECT. 5.

Undeveloped Land Duty.

Deductions from site value assessment.

1124. Before the charge for duty is raised, the site value assessed is subject to the following deductions:—

(1) If increment value duty has been paid in respect of the increment value of the land, a deduction is made from the value assessed of five times the amount paid for increment value duty (*a*).

(2) In the case of land included in any scheme of land development, a remission is allowed of the land assessed to the extent of one acre for every complete £100 expended by the owner or by his predecessors in title with a view to the land being developed (*b*) under the scheme, provided that the expenditure has been incurred within twenty years and the land has not since the date of the expenditure reverted from the condition of developed to that of undeveloped land (*c*). If the expenditure does not cover the whole of the land included in the scheme of land development, the Commissioners may fix upon the part of the land to which the expenditure shall be attributed so as to take it out of the category of undeveloped land liable to the duty (*d*).

(3) Any sum may be deducted which has been paid to a rating authority in respect of an increase in the value of the land due to any improvements made or action taken by the authority (*e*).

Rate of duty.

1125. The duty is levied annually for the year ending the 31st March and is payable at any time after the 1st January of the year for which it is charged. The charge is at the rate of ½*d.* for every 20*s.* of the net site value (*f*).

SUB-SECT. 3.—*Recovery of the Duty.*

Recovery of the duty.

1126. When assessed, the duty becomes a debt due to the Crown from the owner of the land for the time being, and must

(*a*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 16 (3). This includes increment value duty deemed to have been paid (*ibid.*).

(*b*) *Ibid.*, s. 16, provides for the expenditure being incurred on roads (including paving, curbing, metalling, and other works in connection with roads) or sewers, but it is submitted that any expenditure incurred with a view to taking the land out of the category of undeveloped land liable to the duty would be properly taken into account; and where an urban authority under the Private Street Works Act, 1892 (55 & 56 Vict. c. 57), s. 6 (see title HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., p. 228), expends money in sewering, levelling, paving, metalling, or flagging, and charges the cost of so doing on the premises fronting, adjoining, or abutting, the expenditure incurred in respect of this charge on those premises would be properly taken into account in the assessment of the duty upon an area embraced in a scheme of land development which includes the premises upon which the charge is made.

(*c*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 16, (2) (b), as amended by the Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 4. This, it is submitted, will not apply unless the land has continued in the condition of undeveloped land for the space of a year, as it is only in such an event that the change in its character would be officially recognised; see the text, p. 575, *ante.*

(*d*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 16 (2) (b). But an appeal lies from the determination of the Commissioners; see p. 582, *post.*

(*e*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 36; see definition of "rating authority," note (*i*), p. 562, *ante.*

(*f*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 16 (1), 19.

be borne by that owner notwithstanding any contract to the contrary. If the assessment is for any reason not made within the year for which the duty is charged, the duty becomes payable at the expiration of two months from the date of the assessment; but no duty may be assessed more than three years after the expiration of the year for which it is charged (*g*).

SUB-SECT. 4.—*Exemptions.*

Exemptions from undeveloped land duty.

1127. Undeveloped land duty is not charged in the following cases:—

(1) On land, or an interest in land, held by or on behalf of the Crown or of any Government department (*h*);

(2) On any land the site value of which does not exceed £50 an acre (*i*);

(3) On any parks, gardens, or open spaces which are open to the public as of right (*k*);

(4) On any woodlands (*l*), parks, gardens, or open spaces reasonable access to which is enjoyed by the public or by the inhabitants of the locality, including access regularly enjoyed by any of the naval or military forces of the Crown for the purpose of training or exercise, where in the opinion of the Commissioners the access is of public benefit (*m*);

(5) On land kept free from buildings in pursuance of a building scheme (*n*), where it is shown to the Commissioners to be reasonably necessary in the interests of the public, or in view of the character of the surroundings or neighbourhood, that the land should be kept unbuilt upon (*o*);

(*g*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 19. The year here referred to is the financial year ending the 31st March (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 22; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 16 (1)).

(*h*) See title CONSTITUTIONAL LAW, Vol. VII., pp. 118 *et seq.*

(*i*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 17 (1).

(*k*) *Ibid.*, s. 17 (3). For the meaning of the term "open spaces" in other statutes, see title OPEN SPACES AND RECREATION GROUNDS, Vol. XXI., pp. 581, note (*p*), 584.

(*l*) As the use of land as woodland is a use for agricultural purposes, woodlands would also be entitled to exemption or abatement as land so used; see pp. 551, *ante*, 578, *post*.

(*m*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 17 (3). It is doubtful whether access allowed to a limited number of the inhabitants, *e.g.*, the tenants of the houses built around the open space, would satisfy this condition.

(*n*) A building scheme should be sufficiently definite to give contractual rights within the area for which it is operative to the persons who are parties to it (*Reid* v. *Bickerstaff*, [1909] 2 Ch. 305, C. A.; *Willé* v. *St. John*, [1910] 1 Ch. 325, C. A.). But if the scheme is complete this will be sufficient, notwithstanding that the vendors of the land may have reserved a power to dispense with some of the restrictions of the scheme (*Elliston* v. *Reacher*, [1908] 2 Ch. 665, C. A., applying *Osborne* v. *Bradley*, [1903] 2 Ch. 446, and *Formby* v. *Barker*, [1903] 2 Ch. 539, C. A.).

(*o*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8, s. 17 (3) (c). When exemption from the duty has been granted in respect of land under this head, the land cannot afterwards be built over without the consent of the Local Government Board, who may attach to its consent such conditions as it thinks desirable in the circumstances (*ibid.*). As to the power of parties interested in a building scheme to abandon the scheme, see *Whitehouse* v. *Hugh*, [1906] 2 Ch. 283, C. A.

SECT. 5. Undeveloped Land Duty.

(6) On land *bonâ fide* used for the purposes of games or other recreation under an agreement with the owner which as originally made could not be determined for a period of at least five years, or where the circumstances are such that the Commissioners are of opinion that the land will continue to be used for these purposes (*p*);

(7) On land not exceeding one acre in extent occupied together with a dwelling-house, or on land not exceeding five acres occupied with the dwelling-house and used as gardens or pleasure grounds, provided that the site value of the gardens and pleasure grounds together with the site value of the dwelling-house does not exceed twenty times the annual value of the gardens, pleasure grounds, and dwelling-house as assessed to income tax under Schedule A (*q*);

(8) On any agricultural land occupied and cultivated by the owner, where the total value of the land together with any other land belonging to the same owner does not exceed £500 (*r*);

(9) On any land held by or on behalf of a rating authority, or any statutory combination representative of two or more local or rating authorities (*s*);

(10) On any land, or an interest in land, held by or on behalf of any governing body constituted for charitable purposes while the land is used for the purposes for which the body was constituted, and including any land held by a registered society, or by a company incorporated in such circumstances as to be precluded by its Act or charter from dividing any profits amongst its members (*t*); and

(11) On land held by a statutory company for the purposes of its undertaking, which cannot be appropriated by the company except to those purposes, including land which is intended to be ultimately used for works in connection with the undertaking, although pending the carrying out of these works it is used for other purposes (*a*).

(*p*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 17 (3) (d). The opinion of the Commissioners in regard to the matters which they are left to determine under heads (4), (5) and (6) (see p. 577, *ante*, and the text, *supra*) is final and not subject to any appeal (*ibid.*).

(*q*) *Ibid.*, s. 17 (4). If the land occupied with the dwelling-house exceeds five acres in extent, the Commissioners may apportion to the gardens and pleasure grounds, so as to exempt them from the duty, those five acres which in their opinion are most adapted for this use. They may also make any apportionment of the income tax assessment (*ibid.*; and see title INCOME TAX, Vol. XVI., pp. 619 *et seq.*).

(*r*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 18. "Owner" here includes a person who holds land under a lease which was originally granted for a term of fifty years or more (*ibid.*). For general definition of "owner," see note (*c*), p. 554, *ante*. For definition of "total value," see p. 550, *ante*.

(*s*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 35 (1). For definition of "rating authority," see note (*i*), p. 562, *ante*.

(*t*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 37. The exemption is allowed whether the land is used by the body itself or not (*ibid.*). For definition of "governing body constituted for charitable purposes" and of "registered society," see pp. 567, 568, *ante*.

(*a*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 38 (1); and, for definition of "statutory company," see note (*a*), p. 567, *ante*. The effect of this exemption is that all the lands of the company other than "superfluous lands" within the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18),

SUB-SECT. 5.—*Abatements and Allowances.*

SECT. 5. Undeveloped Land Duty.

1128. Abatements and allowances are granted as follows:—

(1) Where agricultural land was, on the 30th April, 1910, held under a lease or agreement entered into before the 30th April, 1909, and the landlord has no power to determine the tenancy of the whole or of any part of the land, exemption from the duty is granted during the original term while the tenancy continues thereunder. If, however, such a power exists, the exemption of that part of the land to which it applies ceases as from the earliest date after the 30th April, 1910 (*b*), at which the power might have been exercised (*c*).

(2) In the case of any agricultural land the site value of which exceeds £50 an acre, the duty is chargeable only on the amount by which the site value of the land exceeds the value of the land for agricultural purposes (*d*).

SECT. 6.—*Mineral Rights Duty.*

SUB-SECT. 1.—*Definition.*

Nature of duty.

1129. Mineral rights duty is a charge raised annually in respect of minerals (*e*) which are the subject of a mining lease (*f*) or which are being worked by the proprietor (*g*).

SUB-SECT. 2.—*Assessment and Collection of the Duty.*

Basis of assessment.

1130. The assessment is made upon the rental value of the right to work the minerals, and of the mineral wayleaves (*h*). Where the right to work the minerals is the subject of a mining lease, this is the amount of rent paid in the last working year by the working lessee, except where the lessor is liable under any Act to pay any sum on account of rates, in which case the rental value is the sum which would be payable as rent if the lessee were liable for these rates instead of the lessor (*i*). Where the proprietor

s. 127 (as to which see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 26 *et seq.*), are not chargeable to undeveloped land duty.

(*b*) The date of the passing of the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), imposing the duty. The charge would, if raised, be subject in any event to an abatement under the next head of allowance; see the text, *supra.*

(*c*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 17 (5).

(*d*) *Ibid.*, s. 17 (2). Where the site value and the value for agricultural purposes differ, provision is made for the keeping of an official record of each; see p. 557, *ante.*

(*e*) As to the general meaning of the term "minerals," see title MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 502—504. Exemption from the duty is allowed to common clay, common brick clay, common brick earth, or sand, chalk, limestone or gravel (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 20 (5)).

(*f*) For the meaning of the term "mining lease," see note (*j*), p. 552, *ante.*

(*g*) For definition of "proprietor," see note (*r*), p. 570, *ante.*

(*h*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 20 (1).

(*i*) *Ibid.*, s. 20 (2) (a), as amended by the Finance Act, 1912 (2 & 3 Geo. 5, c. 8), s. 11 (1). For definition of "working lessee," see note (*s*), p. 570, *ante.* Where it is shown to the Commissioners that the rent paid by a working lessee exceeds the rent customary in the district, and partly represents a return for expenditure on the part of the proprietor

SECT. 6. Mineral Rights Duty.

himself works the minerals, the rental value is the sum which would have been received as rent by him in the last working year if the right to work the minerals had been leased to a working lessee for a term and at a rent and on conditions customary in the district and on the basis of the lessee paying all rates in respect of the minerals (*k*). The rental value of a wayleave (*l*) is the amount of rent (*m*) paid by the working lessee in respect of the wayleave (*n*).

Returns to Commissioners.

1131. To enable the duty to be assessed, every proprietor of minerals, and every person who receives rent in respect of the right to work minerals or of any mineral wayleave, must furnish the Commissioners when called upon to do so with a return showing the rent received by him or, in the case of a proprietor who himself works the minerals, the particulars of the minerals worked (*o*).

Penalty for default in making return.

Any proprietor and any person receiving rent who makes default

which would ordinarily have been borne by the lessee, the Commissioners must substitute as the rental value of the right to work the minerals, or the mineral wayleaves as the case may be, the rent which they determine would have been the rent customary in the district had the expenditure been borne by the lessee (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 20 (2)). There is a right of appeal by any person aggrieved by the determination of the Commissioners (*ibid.*, s. 33 (1)).

(*k*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 20 (2) (a), (b), as amended by the Finance Act, 1912 (2 & 3 Geo. 5, c. 8), s. 11 (2). The Commissioners may fix what this rent would be (*ibid.*). Where the circumstances of a district are such that the rent customary in the district cannot be satisfactorily arrived at, the rental value adopted is the rent which would be payable under similar conditions elsewhere (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 24).

(*l*) "Mineral wayleave" means any wayleave, airleave, waterleave, or right to use a shaft, granted to or enjoyed by a working lessee, whether above or under ground, for the purpose of access to or for the conveyance of the minerals, or the ventilation or drainage of the mine, or otherwise in connection with the working of the minerals (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 24). As to wayleaves generally, see title MINES, MINERALS, AND QUARRIES, Vol. XX., pp. 586, 587.

(*m*) For the general definition of "rent," see note (*l*), p. 572, *ante*. In addition to the meaning there given, it includes for the purposes of the charge of duty on mineral rights any fine, premium, or foregift, or any payment in the nature of a fine, premium, or foregift; and where any rent paid is not in money or money's worth the Commissioners may fix its value (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 24). For consideration paid other than in money's worth, see title ESTATE AND OTHER DEATH DUTIES, Vol. XIII., pp. 277, 278; *Wolverton* (*Baron*) v. *A.-G.*, [1898] A. C. 535; *Holwell Iron Co., Ltd.* v. *Midland Railway*, [1910] 1 K. B. 296, C. A. For the purpose of the charge of mineral rights duty, rent includes arrears of rent paid during the working year (*Beaufort* (*Duke*) v. *Inland Revenue Commissioners*, [1912] 2 K. B. 281).

(*n*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 20.

(*o*) *Ibid.*, s. 20 (3). Minerals which are being won for the purpose of being immediately worked, that is, which are being put in such a condition that they can be continuously worked in the ordinary way, are deemed minerals which are being worked (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 24; *Lewis* v. *Fothergill* (1869), 5 Ch. App. 103). And minerals which are being worked are deemed to include all which would in the ordinary course of events be worked by the same colliery, mine, quarry, or open working (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 24), provided that, in the case of leased minerals, the lessee has the right to work all the minerals under the lease; see *Hodgson* v. *Field* (1806), 7 East, 613, 620. But it is submitted that this would not apply to two sections of a coalfield between which a strip of land intervened, where, but for the strip, the whole of the

in furnishing this return is liable to a penalty not exceeding £50, recoverable in the High Court (*p*).

SECT. 6. **Mineral Rights Duty.**

SUB-SECT. 3.—*Recovery of the Duty.*

Additional liability to increment value duty.

1132. Minerals which are exempt from increment value duty, and are liable only to mineral rights duty, as being, on the 30th April, 1909, the subject of a mining lease or being worked by the proprietor, become liable also to increment value duty if at any time subsequently they cease for a period exceeding two years to be the subject of a mining lease or to be worked, as the case may be (*q*).

Rate of duty.

1133. The duty is charged (*r*) at the rate of 1*s.* for every 20*s.* of the net rental value, and when assessed becomes payable at any time after the 1st January in the year for which it is charged (*s*).

By whom payable.

Duty unpaid is recoverable as a debt due to the Crown from the proprietor of the minerals where the minerals are worked by him, and in any other case from the immediate lessor of the working lessee, and a contract made between the immediate lessor and the working lessee that the latter shall pay the duty is void (*t*).

Deduction of annual increment value duty.

1134. Any proprietor or any lessor of minerals who is liable to pay mineral rights duty in respect of the minerals is entitled to deduct from the sum payable by him any amount paid by him in the same year in respect of annual increment value duty on the minerals (*a*).

coal in one of the sections could have been worked from the shaft sunk for the other section; see *Re Maynard's Settled Estates*, [1899] 2 Ch. 347.

(*p*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 20 (3). Thirty days are allowed within which to make the return. The rent to be returned is the gross rent, including dead rent, royalty, overgettings, and all payments of a similar nature; see forms of notice and return issued by the Commissioners. The notice requiring a return to be made may be sent by post (*ibid.*, s. 31 (4)). It must specify with sufficient particularity the mineral parcel of land for which the return is required; and it must not call upon the person to whom it is addressed to send in the particulars within less than the thirty days allowed by the Act; the person to whom it is addressed may be called upon to furnish the particulars to some person nominated for the purpose by the Commissioners as well as to the Commissioners themselves (*Dyson* v. *A.-G.*, [1912] 1 Ch. 158, C. A.; *Burghes* v. *A.-G.*, [1912] 1 Ch. 173, C. A.).

(*q*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 22 (2); see pp. 568, 569, *ante*.

(*r*) The duty is chargeable on the rent actually received within the working year, including arrears due on account of working in a previous year, but only on the net amount of such arrears less income tax (*Beaufort (Duke)* v. *Inland Revenue Commissioners*, [1912] 2 K. B. 281). Super-tax is not to be deducted from the gross assessment for mineral rights duty (*ibid.*).

(*s*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 20 (1), (4). The year is the financial year ending the 31st March.

(*t*) *Ibid.*, s. 20 (4). But a lease which provided that the duty should be paid by the lessee would not on that account be wholly void, but only as regards the payment of the duty; see title LANDLORD AND TENANT, Vol. XVIII., p. 476, note (*b*). For recovery of debts due to the Crown, see title CROWN PRACTICE, Vol. X., pp. 1 *et seq.*; and see pp. 737 *et seq.*, *post*.

(*a*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 22 (6); and see p. 569, *ante*.

SECT. 6. Mineral Rights Duty.

Right of intermediate lessor to deduct duty.

1135. If an immediate lessor, who has paid the duty, is himself a lessee of the right to work the minerals or of the mineral wayleave in respect of which the duty was paid, he may deduct from the rent payable by him a sum equal to the duty chargeable on a rental value of the same amount as the rent which he pays (*b*). In the same way, anyone from the rent payable to whom such a deduction has been made may himself make a corresponding deduction from any rent payable by him in respect of the right to work the minerals, or of the mineral wayleave (*c*). Any person refusing to allow a deduction properly claimed for duty so paid is liable to a penalty not exceeding £50 recoverable in the High Court (*d*).

SECT. 7.—*Appeals to a Referee.*

SUB-SECT. 1.—*Grounds of Appeal.*

Grounds of appeal.

1136. Except in cases where the decision of the Commissioners is expressly declared to be final (*e*), any person aggrieved may appeal against:—

(1) Their determination of the total value or the site value of any land (*f*);

(2) The amount of their assessment of any duty (*g*);

(3) A refusal by them to make the allowance claimed where they are competent to make the allowance;

(4) Any apportionment of the value of the land or of duty or any assessment or apportionment made by them of the consideration for a transfer on sale or a lease (*h*); or

(*b*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 21. Where the rental value upon which the duty was assessed is a reduced rent substituted for that actually paid by the working lessee, a corresponding reduction must be made in the sum which the immediate lessor is entitled to deduct from the rent payable by him to his lessor (*ibid.*, s. 21 (4)). The deduction must be made on the first occasion of the payment of rent next after the date when the duty was paid; see title LANDLORD AND TENANT, Vol. XVIII., p. 477.

(*c*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 21 (1).

(*d*) *Ibid.*, s. 21 (3). Proceedings for recovery of the penalty can only be taken in the name of the Attorney-General (Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 21 (1)). They should be commenced within two years next after the penalty was incurred (*ibid.*, s. 22 (2)). As to the right to a penalty so recovered, see *A.-G.* v. *Exeter Corporation*, [1911] 1 K. B. 1092.

(*e*) This is so as regards their determination of the question whether an access allowed the public, or a section of the public, to open spaces is of public benefit (see p. 577, *ante*), or whether it is in the interest of the public that certain land should be kept free from buildings under a scheme of land development, or whether land set apart for games or other recreation is *bonâ fide* devoted to that use (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 17 (3); and see p. 578, *ante*).

(*f*) For definitions of "total value" and "site value," see p. 550, *ante*.

(*g*) On an appeal under this head the appellant cannot raise the question whether the original total or original site value was correctly fixed (*ibid.*, s. 33 (1) (b)).

(*h*) The Commissioners have power to apportion any original site value or other site value where a part only of the parcel of land as originally valued is the subject of the charge of duty (*ibid.*, s. 29). The unit for valuation purposes is normally each piece of land in separate occupation

(5) Their determination of any other matter which by the Act imposing the duties they are authorised to determine (*i*). SECT. 7. Appeals to a Referee.

SUB-SECT. 2.—*Conditions of Appeal.*

1137. An appeal against a valuation can only be brought by a person who has formally given notice of objection and who is an owner of the land (*j*), or a person having a statutory interest in the land; but, where a lessee is the owner, the person entitled to the fee simple reversion, or to a leasehold reversion for a term of more than twenty-one years, may also appeal (*k*). If the tenant for life and the trustees of settled land exercise a discretion as to whether they will accept a provisional valuation, the court will not interfere at the instance of the reversioner (*l*). Who may appeal.

1138. The appellant must give notice in writing of his intention to appeal, setting forth the grounds of the appeal, and he is not entitled to rely at the hearing upon any grounds other than those thus set out (*m*). Notice of appeal.

SUB-SECT. 3.—*Constitution of Court.*

1139. The appeal is to a referee who is selected from a panel of referees appointed by a Reference Committee consisting of the Lord Chief Justice of England, the Master of the Rolls, and the President of the Surveyors' Institution (*n*). Referee.

(see p. 555, *ante*), or, on the request of an owner of contiguous pieces of land, any number of such pieces the aggregate area of which does not exceed 100 acres (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 26 (1), as amended by the Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 5). Where a part only of the fee simple of the land is the subject of a transfer or lease, an apportionment of the whole increment value duty payable on the fee simple value must be made; see Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 29 (2), 32 (3); Stat. R. & O., 1910, p. 395, rr. 2, 3.

(*i*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 33.

(*j*) For definitions of "owner," see note (*c*), p. 554, *ante*, and for definition of "interest," see note (*b*), p. 558, *ante*.

(*k*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 27, 33. But the referee may, should he see fit, allow any third person who appears to him to be interested in the land, or in the matter of the appeal, to put his case before him in writing, or to take part in any consultation with reference to the appeal (Land Values (Referee) Rules, 1910 (Stat. R. & O., 1910, p. 398), r. 11).

(*l*) *Re Knollys' Trusts, Saunders* v. *Haslam*, [1912] 2 Ch. 357, C. A.

(*m*) This may, however, be done with the leave of the referee (Land Values (Referee) Rules, 1910, r. 8). In the case of an appeal against a valuation, the notice of appeal must not be given before the expiration of thirty days after notice of objection to the valuation has been given by the appellant, and, if the Commissioners have given him notice that they do not intend to amend their valuation, the notice of appeal must be given within thirty days after such notice. If the appeal is against an assessment, apportionment, refusal to grant an allowance, or other determination of the Commissioners, the notice to appeal must be given within thirty days after the determination of the Commissioners has been notified to the appellant (*ibid.*, r. 4).

(*n*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 33 (2), (5), 34. In the case of the death or incapacity of the referee originally selected, or if it is shown to the Reference Committee in any other case that it is expedient to do so, they may, at any time before he has given his decision, revoke the reference to the selected referee and select another referee to try

SECT. 7. SUB-SECT. 4.—*Procedure on Appeal.*

Appeals to a Referee.

1140. Either party may appear before the referee by a representative (*o*).

Appearance of parties.

Place of hearing.

The referee must, without delay, arrange with the Commissioners and the appellant as to the time and place of hearing, and both parties must furnish him on his request with any documents or other information which it is in their power to give, and which he may require for the purposes of the appeal (*p*).

Decision of referee.

1141. The decision of the referee must be in the form contained in the Schedule to the Statutory Rules or to the like effect, and copies of it must be furnished by him to the Reference Committee, the Commissioners, and the appellant (*q*).

How given effect to.

When the Commissioners have received notice of the decision of a referee, they must without delay make such alterations in their records and other documents as may be necessary to give effect to it (*r*).

SECT. 8.—*Appeals to the High Court.*

SUB-SECT. 1.—*Conditions of Appeal.*

Who may appeal.

1142. Any person aggrieved (*s*) by the decision of a referee may appeal against that decision to the High Court, subject to the conditions laid down in the Rules of Court governing such appeals, and to certain provisions of the Finance Act, 1894 (*t*).

SUB-SECT. 2.—*The Court.*

High Court.

1143. The appeal is to be set down for hearing upon the Revenue side of the King's Bench Division of the High Court, but it may by order of the court or a judge be heard before a judge of the Chancery Division, or at assizes (*u*).

the appeal (Land Values (Referee) Rules, 1910, r. 10). Any referee appointed must be a person who is a member of the Surveyors' Institution or has experience in the valuation of land (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 34).

(*o*) *Ibid.*, s. 33 (3). When the Commissioners have received notice of an appeal against total or site value on a provisional valuation made by them, they must give notice of the appeal to any person from whom they have required a return of the land or who is entitled to apply to them for a copy of the provisional valuation (Land Values (Referee) Rules, 1910, r. 11 (2)).

(*p*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 33 (5); Land Values (Referee) Rules, 1910, r. 7. The conduct of the proceedings is in the discretion of the referee, subject to any special directions given by the Reference Committee (*ibid.*).

(*q*) See Land Values (Referee) Rules, 1910, Sched. II.

(*r*) *Ibid.*, r. 12.

(*s*) "Person aggrieved" includes the Commissioners (Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 7).

(*t*) 57 & 58 Vict. c. 30, s. 10 (2), (3), (4); see Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 33 (4). The appeal may, in the case of small estates, be to the county court; see p. 586, *post*. The Rules of Court governing the procedure on appeal are embodied in R. S. C. (Finance (1909-10) Act), 1911; Yearly Practice of the Supreme Court, 1913, pp. 1573, 1574. For the provisions of the Finance Act, 1894 (57 & 58 Vict. c. 30), referred to, see title ESTATE AND OTHER DEATH DUTIES, Vol. XIII., pp. 226, 227; and see Yearly Practice of the Supreme Court, 1913, pp. 1573 *et seq.*

(*u*) R. S. C. (Finance (1909-10) Act), 1911, rr. 5, 6 (1). If the petition

SUB-SECT. 3.—*Procedure on Appeal.*

SECT. 8. **Appeals to the High Court.**

1144. Proceedings are commenced by petition filed within one month of the date of the referee's decision and setting forth the facts and the contentions of law upon which the appellant alleges the decision was erroneous (*v*). Petition.

A copy of this petition must be served on the Commissioners of Inland Revenue within seven days of the date of filing (*a*). Service.

Within ten days of such service the respondent must serve a notice on the appellant stating how far, if at all, he admits the facts and contentions stated in the petition (*a*). Respondent's notice of admissions.

Within twenty-eight days of service of the petition, the respondent must serve upon the appellant a further notice stating the facts and contentions of law upon which he intends to rely at the hearing, and he may call upon the appellant to state whether and to what extent he admits the facts and contentions of law relied upon by the respondent (*b*). Respondent's notice to admit.

Within seventeen days after service of this notice either of the parties may set the petition down for hearing (*c*). Setting down.

1145. On an appeal where the Commissioners allege that any sum is due from an appellant by way of duty, they may apply by summons before a judge in chambers to have the proceedings stayed until the appellant has paid or given security for the duty claimed, and upon such summons the judge may make such order as seems reasonable in the circumstances (*d*). Security for duty claimed.

1146. Except by consent or unless it is otherwise ordered, only oral evidence is admissible at the hearing of the appeal (*e*). Evidence.

SUB-SECT. 4.—*Further Appeal.*

1147. The decision of the court is final, except by leave of the court or of the Court of Appeal (*f*). An appeal lies without leave Court of Appeal.

is heard at assizes, the appellant is in the position of a plaintiff within R. S. C., Ord. 36, rr. 22B and 28 (R. S. C. (Finance (1909-10) Act), 1911, r. 6 (2)).

(*v*) R. S. C. (Finance (1909-10) Act), 1911, rr. 1, 2. Except with the leave of the court, the appellant is not entitled to rely on any facts or contentions of law other than those set forth in the petition, and the respondent is not entitled to rely upon any facts or contentions of law other than those stated by him in his notice served on the appellant (*ibid.*, r. 8).

(*a*) *Ibid.*, r. 4 (2).

(*b*) *Ibid.*, r. 4 (1); and see *ibid.*, r. 8; note (*v*), *supra*. The parties to the appeal must also exchange lists of all documents in their possession relating to the matter in issue, and give inspection at all reasonable times of any of those documents not protected by privilege, and provide copies of them on the usual terms (R. S. C. (Finance (1909-10) Act), 1911, r. 9). The petition may be amended at any stage of the proceeding by having any matter struck out by order of the judge on the application of the respondent (*ibid.*, r. 13, applying R. S. C., Ord. 19, r. 27); and the court may allow the amendment of the petition by the appellant on terms (R. S. C. (Finance (1909-10) Act), 1911, r. 12).

(*c*) *Ibid.*, r. 5.

(*d*) *Ibid.*, r. 14. An order so made may be subsequently varied or discharged on the application of either of the parties (*ibid.*).

(*e*) *Ibid.*, r. 7.

(*f*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 33 (4), applying the Finance Act, 1894 (57 & 58 Vict. c. 30), s. 10 (2).

SECT. 8. Appeals to the High Court.

from the decision of the Court of Appeal to the House of Lords (*g*).

SECT. 9.—*Appeals to the County Court.*

SUB-SECT. 1.—*Conditions of Appeal.*

Appeal to county court.

1148. Where the total value or the site value as fixed by the Commissioners of the property in respect of which the dispute has arisen does not exceed £500, the appeal against the decision of the referee may be to the county court of the county or place in which the appellant resides or the property is situated (*h*).

SUB-SECT. 2.—*Procedure on Appeal.*

Petition.

1149. The appellant must, within one month from the date of the decision of the referee, file a petition setting forth specifically the facts and contentions of law upon which he alleges that the decision was erroneous (*i*).

Procedure.

1150. The rules as to admissibility of evidence, discovery and inspection of documents, and notices to either side to admit facts relied upon by the other, are the same as in the case of an appeal to the High Court, and the county court judge has the same power as a judge of the High Court as to making or varying an order on an application of the Commissioners that the action may be stayed until the duty alleged to be due shall be paid or secured (*k*).

Date of hearing.

1151. The date to be fixed for hearing must not be less than sixty days from the day of the filing of the petition (*l*).

SUB-SECT. 3.—*Further Appeal.*

Court of Appeal.

1152. Either party aggrieved with the decision of the county court judge may appeal therefrom to the Court of Appeal (*m*).

(*g*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 3. As to appeals to the House of Lords, see title PARLIAMENT, Vol. XXI., pp. 643 *et seq.*

(*h*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 33 (4), as amended by the Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 7. An appeal by the Commissioners against the decision of a referee would, it is submitted, lie to the county court of the place where the valuer who made the valuation resides or the land is situate. The residence of the Commissioners for the purpose of fixing jurisdiction is Somerset House, Strand, London; see *Taylor* v. *Crowland Gas and Coke Co.* (1855), 11 Exch. 1; *Keynsham Blue Lias Lime Co.* v. *Baker* (1863), 2 H. & C. 729. As to county courts, generally, see title COUNTY COURTS, Vol. VIII., pp. 405 *et seq.*

(*i*) County Court Rules (Stat. R. & O., 1911, p. 35), rr. 33, 34. At the trial of the petition the appellant cannot rely upon any facts or contentions of law not stated in the petition unless by leave of the judge (*ibid.*, r. 40). The judge may extend the time for filing the petition or for serving any petition or notice upon such terms (if any) as the justice of the case may require (*ibid.*, r. 43).

(*k*) County Court Rules (Stat. R. & O., 1911, p. 35), rr. 36, 37, 38; see p. 585, *ante*; and see title DISCOVERY, INSPECTION, AND INTERROGATORIES, Vol. XI., pp. 35 *et seq.*

(*l*) *Ibid.*, r. 35 (2). After filing the petition, a sealed copy is given to the appellant by the registrar for service on the respondent. This service must be effected within seven days of the date of filing (*ibid.*, r. 35 (3)).

(*m*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 33 (4).

Part V.—Customs Duties.

SECT. 1.—*Introductory.*

SUB-SECT. 1.—*In General.*

Duties on exports and imports.

1153. "Duties of customs" or "customs duties" are duties or tolls payable upon commodities exported from or imported into this country, as opposed to "excise duties," which are payable upon articles produced and consumed at home (*n*).

Place of importation.

1154. Goods liable to a customs duty may be imported into the United Kingdom only by such legal quay, wharf, or other place (*o*), and subject to such regulations, as the Commissioners of Customs and Excise (*p*) may from time to time prescribe. Goods landed otherwise are liable to forfeiture (*q*).

Report on arrival at port.

1155. Upon the arrival in any British port of a vessel from beyond the seas, the master or other responsible officer must, within twenty-four hours and before breaking bulk, make report in the prescribed form to the proper officer of customs of the particulars of the cargo (*r*). Failure to make due report involves a penalty of £100, and the goods not reported may be detained (*s*).

"Entry."

1156. If the cargo includes dutiable goods, the importer (*t*) must make due "entry" (*u*) of such goods on the prescribed form within fourteen days (exclusive of Sundays and holidays) after the arrival

(*n*) See Street's Law Dictionary; Wharton's Law Lexicon; Murray's New English Dictionary. In modern times customs duties have seldom been imposed upon exported commodities.

(*o*) Legal quays for the lading and unlading of goods are appointed by Treasury Warrant (Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 24; Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 11); see title CONSTITUTIONAL LAW, Vol. VI., p. 459. The importation of some classes of goods, such as saccharin, tobacco and wine in cask, is restricted to special ports; see pp. 599, note (*v*), 607, note (*p*), 609, note (*h*), *post*. As to the right of public user of ports, and as to the limitation of importation and exportation in time of war, see title CONSTITUTIONAL LAW, Vol. VI., pp. 460, 461. As to quays and harbours generally, see title WATERS AND WATERCOURSES.

(*p*) As to the Commissioners of Customs and Excise, see pp. 544, 545, *ante*.

(*q*) Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 13. This restriction is not limited to goods liable to a customs duty.

(*r*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 50. A vessel is considered to have arrived when she comes within the limits of the port (*ibid.*, s. 40; and see *Algoma Central Railway* v. *R.*, [1903] A. C. 478, P. C.). It is part of the prerogative of the Crown as incident to the duty of customs to appoint officers to gauge all gaugable articles imported into the kingdom (*London Corporation* v. *Long* (1807), 1 Camp. 22). As to officers of customs and excise, see pp. 545 *et seq.*, *ante*.

(*s*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 51. As to the recovery of customs penalties, see pp. 737 *et seq.*, *post*.

(*t*) "Importer" means, includes, and applies to any owner or other person for the time being possessed of, or beneficially interested in, any goods at and from the time of the importation thereof until the same are duly delivered out of the charge of the officers of customs (Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 284).

(*u*) A customs "entry" of goods is a description of the goods, their origin and destination, given in one of the forms set out in the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), Sched. B.

SECT. 1. Introductory.

of the vessel and before unshipment of the goods. This may be done either by perfect entry or by entry by bill of sight (*v*).

Perfect entry.

Perfect entry may be either for goods to be immediately cleared for home use on payment of the duty found to be chargeable thereon (*a*), or it may be for goods to be deposited in a duty-free warehouse (*b*).

Entry of bill of sight.

The entry by bill of sight is a provisional entry of the goods made when the importer or his agent is unable for want of full information to make a perfect entry of the goods (*c*). Where goods have been landed on a bill of sight, full and perfect entry must be made within three days after the landing (*d*).

Delivery of entry.

All entries are made in duplicate, and delivered to the collector or other proper officer of customs at the port (*e*).

Landing of the goods.

1157. Entry having been made, the importer is required within fourteen days of the arrival of the vessel, or such further time as the Commissioners may allow, to land the goods (*f*), but unless by special permission of the Commissioners they must not be landed or put on shore on Sundays or holidays, nor on any other days except between the hours of 8 a.m. and 4 p.m. from the 1st March to the 31st October, both inclusive, nor except between the hours of 9 a.m. and 4 p.m. during the remainder of the year (*g*).

Production of goods to officer of customs.

1158. All dutiable goods imported must be produced to the proper officer of customs for the purpose of examination and account (*h*). If it is found that goods of one denomination are concealed in a package of goods of another denomination, or if any package does not correspond with the entry, or if any package contains other goods or goods subject to a higher rate or

(*v*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 73. If not entered, the goods may be conveyed to the King's warehouse, and, if all duties and charges on them are not paid within three months, they may be sold (*ibid.*). This applies to imported goods in general, but neither entry nor report is required of diamonds or bullion, or of lobsters or fresh fish of British taking imported in British ships: the Commissioners may, however, require an account to be rendered of gold, bullion and diamonds (Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 13; Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 3).

(*a*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 55.

(*b*) *Ibid.*, s. 57.

(*c*) *Ibid.*, s. 58.

(*d*) *Ibid.*; s. 61. If the perfect entry is not duly made and the duty paid on the goods, they are regarded as goods unlawfully shipped (*A.-G.* v. *Hawkes* (1830), 1 Cr. & J. 121; *A.-G.* v. *Hurel* (1843), 11 M. & W. 585).

(*e*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 65. Entry is not required for the re-importation of British goods of a kind which, had they been foreign, would have been liable to a duty of customs, provided they are brought back within five years from the date of exportation, that their identity is established to the satisfaction of the Commissioners, and that the drawback, if any, paid upon them is repaid (Customs and Inland Revenue Act, 1879 (42 & 43 Vict. c. 21), s. 6). In the case of British spirits exported, the excise allowance paid on exportation must also be repaid when they are brought back (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 59); and, as to drawbacks and excise allowances, see pp. 697 *et seq.*, *post.*

(*f*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 73. The period allowed for landing has been extended to twenty-one days by Minute of the Commissioners dated 4th August, 1881.

(*g*) Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 9.

(*h*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 77.

other amount of duty than those of the denomination by which such package or goods were entered, such package and goods are forfeited, and the person who has imported the goods or caused them to be imported is liable to a penalty of £100 or treble the value (*i*) of the goods at the option of the Commissioners (*j*).

Penalty for false declaration.

Any person making a false declaration, or signing or using a false document, or untruly answering questions put to him by any officer of customs as to matters under the direction of the Commissioners is liable to a penalty of £100 (*k*).

Clearance or deposit in duty-free warehouse.

1159. Upon completed entry and examination of the goods, the duty found chargeable thereon may be paid, and they may be cleared for home use (*l*), or they may be deposited in a duty-free warehouse approved for the custody of goods of that kind, in which case payment of the duty is postponed until their delivery for home consumption (*m*).

SUB-SECT. 2.—*Warehousing.*

Access to goods.

1160. When warehoused, the goods are required to be kept so as to be readily accessible, and the warehouse-keeper must produce them when required to do so by an officer of customs and excise (*n*).

Liability of warehouse-keeper.

The warehouse-keeper is alone responsible to the proprietor of the goods for their safe keeping while in warehouse, but should goods warehoused be destroyed or embezzled by an officer of customs and excise not acting in the execution of his duty (*o*) or by the aid or assistance of such officer, the Commissioners may, with the consent of the Treasury, make good the damage suffered by the importer or consignee, provided that the guilty official has been prosecuted to conviction by the importer, consignee, or warehouse-keeper (*p*).

Embezzlement by customs officer.

(*i*) The value to be taken is to be estimated according to the rate and price for which the best goods of the like sort or kind and denomination for which the duty or duties thereon have been paid were sold in London at or about the time of the commission of the offence (Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 69; Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 214).

(*j*) *Ibid.*, s. 67. The justices have no power to mitigate the penalty (*Bond* v. *Jackson* (1869), 20 L. T. 327). A person ordering the goods would be liable under this provision (*Budenberg* v. *Roberts* (1866), L. R. 1 C. P. 575). For special provisions as to penalties on the importation of tobacco, see p. 608, *post*. On a suit for the penalty the jury find the single value (*A.-G.* v. *Hatton* (1824), M'Cle. 214; *A.-G.* v. *Goldstein* (1905), *Times*, 26th July). As to the recovery of customs penalties, see pp. 737 *et seq.*, *post*.

(*k*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 168. As to the recovery of customs penalties, see pp. 737 *et seq.*, *post*.

(*l*) The duty chargeable is at the rate in force at the time when the entry of the goods was delivered (Finance Act, 1901 (1 Edw. 7, c. 7), s. 7 (2)).

(*m*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 77. The liability of the importer for the duty on the goods is not done away with by their being warehoused (*A.-G.* v. *Ansted* (1844), 12 M. & W. 520). If delivered out of warehouse without being duly entered the goods are forfeited (*A.-G.* v. *Vondiere* (1834), 1 Cr. M. & R. 570; *Lowe* v. *A.-G.* (1835), 2 Cr. M. & R. 544, Ex. Ch.).

(*n*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 81, 82; Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 60. Failure to do so involves liability to a penalty of £5 (*ibid.*).

(*o*) As to the position of the warehouse proprietor where the officer connives at a fraudulent interference with the goods warehoused, see *A.-G.* v. *Brewster* (1795), 2 Anst. 560.

(*p*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 85; Spirits

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Remission of duty.

The duty chargeable on the goods is also remitted in such a case; and the Commissioners may remit or return any duties due or paid on goods warehoused or to be warehoused, which are lost or destroyed by unavoidable accident, either on board ship or in warehouse, or in course of removal thereto or receipt therein (*q*).

Duty on goods in bond.

1161. While the goods are in the bonded warehouse (*r*), the duty is secured by bond or such other security as the Treasury or the Commissioners may approve (*s*).

Discharge from payment of duty.

The liability to pay the duty is discharged if the goods are exported under the regulations, or are so dealt with while in warehouse as to cease to be dutiable (*t*), or if they are removed under bond to another warehouse (*u*).

SUB-SECT. 3.—*Delivery from Warehouse.*

Calculation of duty.

1162. The duty payable on goods upon their delivery from warehouse for home consumption is that chargeable according to the account taken on importation, except in the case of tobacco,

Act, 1880 (43 & 44 Vict. c. 24), s. 52; *Distillers Co., Ltd.* v. *Russell's Trustee* (1889), 16 R. (Ct. of Sess.) 479; *Brewis* (*Cumming & Co.'s Trustee*) v. *Robertson and Baxter* (1891), 28 Sc. L. R. 449.

(*q*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 87, 116. Should the Commissioners not be satisfied that the circumstances were such as to justify their repaying or remitting the duty, an action will not lie to compel them to remit or repay it (*Macfarlane* v. *Inland Revenue Commissioners* (1859), 22 Dunl. (Ct. of Sess.) 266; and see *Leakey and Haig* v. *Dunglinsor* (1891), 65 L. T. 152).

(*r*) A bonded warehouse is a secure place approved by the Commissioners of Customs and Excise, for the service of the public, for the deposit of dutiable goods upon which the duty has not been paid (Code, Par. 13).

(*s*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 13. All bonds and other securities relating to customs are taken to the use of His Majesty. Such bonds may be given by minors, but it is the practice of the Commissioners in the case of a bond given by a minor to require that the sureties shall be of full age. All bonds, except such as are given for securing the due exportation of, or the payment of duty upon, warehoused goods, may, after the expiration of three years from the date thereof, or from the time, if any, limited therein for the performance of the condition thereof, be cancelled by order of the Commissioners (Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 165). A surety to the bond is entitled to the Crown's priority in bankruptcy (*Re Churchill* (*Lord*), *Manisty* v. *Churchill* (1888), 39 Ch. D. 174). Stamp duty is payable upon customs and excise bonds at the following rates:—

	£	s.	d.
Where the penalty does not exceed £10	0	0	3
Exceeds £10 but not £25	0	0	8
„ £25 „ £50	0	1	3
„ £50 „ £100	0	2	6
„ £100 „ £150	0	3	9
In any other case	0	5	0

(Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched I., *sub voce*). But this does not apply to bonds given for the purpose of obtaining drawback upon dutiable goods exported (*ibid.*), or given in respect of the removal, transhipment, exportation, carriage coastwise, or shipment as stores, of any goods. These bonds are exempt from stamp duty (Finance Act, 1905 (5 Edw. 7, c. 4), s. 5). As to bonds generally, see title BONDS, Vol. III., pp. 79 *et seq.*

(*t*) As in the case of spirits used in bond to fortify wine or lime or lemon juice, or spirits methylated in bond, or tobacco denatured; see pp. 608, 609, 624, 627, 639, *post.*

(*u*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 88, 89. No duty is chargeable on spirits removed under bond to the premises of an authorised methylator; and where spirits, other than methylic alcohol,

spirits, wine, figs, currants and raisins, sugar and sugar goods, and molasses, upon which duty is charged upon the account taken on delivery (*v*).

Delivery account.

All duties are calculated according to imperial weight and measure (*a*).

Rate of duty.

1163. In the case of goods cleared for home consumption or importation, the rate of duty applicable is that in force at the time when the entry was passed (*b*). Where goods are warehoused and subsequently delivered for home consumption, the rate of duty applicable is that chargeable at the date of the actual removal of the goods from warehouse (*c*). If the goods have been delivered under bond for removal to another warehouse to be re-warehoused, and the duty is paid on them prior to re-warehousing, the rate of duty applicable is that in force at the time the duty is actually paid (*d*).

Burden of proof as to due unshipment and payment of duty.

1164. In the case of restricted goods subject to a duty of customs, which are found or seized within the United Kingdom (*e*), and in

are removed to be used in an art or manufacture under the Finance Act, 1902 (2 Edw. 7. c. 7), s. 8, the only duty chargeable is the difference between the customs duty on the spirits and the excise duty which would be payable on home-made spirits of the same kind; see note (*o*), p. 624, *post*. As to delivery from warehouse, see the text, *infra*.

(*v*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 98; Revenue Act, 1903 (3 Edw. 7, c. 46), s. 3. If, however, the officer in charge of the warehouse has reasonable grounds for supposing that any deficiency shown on the delivery account of the excepted goods is due to fraud, duty may be charged on such deficiency or any part of it (Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 99); and when any deficiency not due to natural waste in such goods while in bond is discovered, the Commissioners may call upon the warehouse proprietor forthwith to pay the duty on such deficiency (Revenue Act, 1909 (9 Edw. 7, c. 43), s. 2). In taking accounts, the officer has some, if not absolute, discretion, provided he does not exercise it improperly (*R.* v. *Speller* (1847), 1 Exch. 401).

(*a*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 17; and see title WEIGHTS AND MEASURES.

(*b*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 19; and as to when duties payable on importation are chargeable, see *Canada Sugar Refining Co.* v. *R.*, [1898] A. C. 735, P. C. On a legacy of wines which arrived at the port before the death of the testator, where the report was made before, but the entry was not made until after, the death, the executor was held bound to pay the duties out of the assets (*Stewart* v. *Denton* (1785), 4 Doug. (K. B.) 219). As to "entry" of the goods, see note (*u*), p. 587, *ante*.

(*c*) Finance Act, 1900 (63 & 64 Vict. c. 7), s. 9. Where a sale of goods in bond has taken place, and, prior to the delivery, an increase has taken place in the rate of duty, the seller may, in the absence of agreement to the contrary, add to the contract price a sum equal to any amount paid by him in respect of the increase of duty (*Conway Brothers and Savage* v. *Mulhern & Co., Ltd.* (1901), 17 T. L. R. 730); and see title SALE OF GOODS. As to a conditional sale where the duty on the article sold has been increased, see *Newbridge Rhondda Brewery Co.* v. *Evans* (1902), 86 L. T. 453. If any duty has been reduced or repealed under like circumstances, the buyer is entitled to deduct from the contract price a sum equal to the amount of the decrease. In case of a dispute arising between the parties as to the sum to be added or deducted, the Commissioners may determine the proper amount (Finance Act, 1901 (1 Edw. 7, c. 7), s. 10; Finance Act, 1902 (2 Edw. 7, c. 7), s. 7).

(*d*) Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 3.

(*e*) Such as extracts or essences of coffee, chicory and tea, saccharine, spirits, tobacco, and wine; see pp. 596, 597, 599, 601, 606, 607, 609, *post*.

SECT. 1. Introductory.

the case of any proceedings taken to enforce a forfeiture or recover a penalty for smuggling under the Customs or Excise Acts, it rests with the defendant or claimant of the goods to prove that they have been properly unshipped and the duties paid thereon (*f*).

SUB-SECT. 4.—*Isle of Man.*

Part of the United Kingdom.

1165. The Isle of Man is part of the United Kingdom for the purposes of the Acts relating to customs duties (*g*), but not for excise purposes (*h*).

Imports of produce of the Isle.

1166. Goods the growth or produce of the Isle of Man may be imported into Great Britain or Ireland on a certificate being furnished of their origin, and on the payment of such a duty as may countervail the duty of excise payable on the same class of goods in the United Kingdom, regard being had to any insular duties already paid on them (*i*).

Goods imported into Isle liable to higher duty in Great Britain.

1167. Goods imported from abroad into the Isle of Man, which are liable to a higher rate of duty in Great Britain or Ireland than in the Isle, may not be brought into Great Britain or Ireland, if they have been cleared for consumption in the Isle, or delivered from the custody of the customs officers there (*k*).

SUB-SECT. 5.—*Miscellaneous Duties of the Commissioners.*

Administrative duties at ports.

1168. In addition to the functions for which the Commissioners of Customs and Excise are primarily constituted (*l*), the department undertakes administrative duties at the ports in connection with postal letters and stamps (*m*), merchant ships (*n*), infectious diseases of human beings (*o*), animals (*p*) and plants (*q*), the assaying and marking of plate (*r*), and the importation of copyright

(*f*) Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 76; Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 179, 259. A judgment of the Revenue side of the High Court declaring goods to be forfeited is conclusive, and the question of their forfeiture cannot be raised again (*Scott* v. *Shearman* (1775), 2 Wm. Bl. 977; and see p. 737, *post*).

(*g*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 277. The Treasury have power to limit the importation of goods into the Isle of Man (*ibid.*, s. 283); and see title DEPENDENCIES AND COLONIES, Vol. X., p. 577.

(*h*) *Griffin* v. *Weatherby* (1868), L. R. 3 Q. B. 753.

(*i*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 146, 279. The duties are the same as those charged in the United Kingdom except in the case of beer, spirits, and chicory. Part of the duties on beer and spirits is a temporary tax which is renewed annually (Isle of Man Customs Act, 1900 (63 & 64 Vict. c. 31)); and see note (*d*), p. 600, *post*.

(*k*) Customs and Inland Revenue Act, 1879 (42 & 43 Vict. c. 21), s. 13. If not delivered out of official custody, they may be forwarded to Great Britain or Ireland under the regulations, proper security having first been given for their due delivery at the port to which they are forwarded.

(*l*) As to these, see pp. 544 *et seq.*, *ante*.

(*m*) See title POST OFFICE, Vol. XXII., pp. 655, 656.

(*n*) See title SHIPPING AND NAVIGATION.

(*o*) See titles PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 432 *et seq.*; SHIPPING AND NAVIGATION.

(*p*) See title ANIMALS, Vol. I., pp. 403, 432.

(*q*) See title AGRICULTURE, Vol. I., p. 280.

(*r*) See the text, *infra*.

works (*s*), explosives (*t*), various articles of food and drugs (*a*), and goods bearing fraudulent or misleading marks (*b*).

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1169. All gold and silver plate imported into the United Kingdom (*c*) must be entered to be warehoused and must not be delivered except for private use until it has been assayed, stamped or marked (*d*). The Commissioners may make regulations for the removal of plate from warehouse in charge of an officer to the nearest assay office to be assayed (*e*). If upon assay it is found to be of standard quality, it may be stamped and delivered for home use. If it is found not to be of standard quality it must be returned to warehouse in charge of an officer, and may, within one month from the date of such return, be exported under bond; and if it is not exported within this period, or at an earlier date should the importer so desire, any part not exported must be cut, broken, and defaced by the proper officer of customs and delivered from warehouse upon payment of all proper charges (*f*).

Importation of gold and silver plate.

1170. Officers of customs also enforce the laws restricting the exportation of unclean salmon or salmon caught at unseasonable times (*g*), assist in carrying out certain duties in connection with foreign enlistment (*h*), and collect pilotage dues on behalf of the Trinity House (*i*).

Miscellaneous duties of officers of customs.

(*s*) See title COPYRIGHT AND LITERARY PROPERTY, Vol. VIII., pp. 169, 170, 200; Copyright Act, 1911 (1 & 2 Geo. 5, c. 46), ss. 14 *et seq.*

(*t*) See title EXPLOSIVES, Vol. XIV., p. 382.

(*a*) See title FOOD AND DRUGS, Vol. XV., pp. 5, 37, 43—45, 55, 65, 66, 68, 69.

(*b*) See title TRADE MARKS, TRADE NAMES, AND DESIGNS.

(*c*) This does not include ornamental plate of foreign manufacture made prior to 1800 (Customs (Amendment) Act, 1842 (5 & 6 Vict. c. 56), s. 6), nor battered plate (Customs Act, 1842 (5 & 6 Vict. c. 47), s. 59); nor small wares, such as rings, chains, or lockets (*ibid.*, s. 59, embodying the Plate (Offences) Act, 1738 (12 Geo. 2, c. 26), ss. 2, 6, and the Silver Plate Act, 1790 (30 Geo. 3, c. 31), ss. 3, 4, 5); nor articles of plate exempted from assay in the United Kingdom (Revenue Act, 1883 (46 & 47 Vict. c. 55), s. 10 (11)); nor articles of foreign plate which, in the opinion of the Commissioners, may be properly described as hand-chased, inlaid, bronzed or filigree work of oriental pattern (Revenue Act, 1884 (47 & 48 Vict. c. 62), s. 4; Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8), s. 17 (1)). But it does include watch cases forming part of foreign-made finished watches (*Goldsmiths' Co.* v. *Wyatt*, [1907] 1 K. B. 95, C. A.) and articles inlaid with enamel or set with precious stones on a foundation of gold or silver (*Fabergé* v. *Goldsmiths' Co.*, [1911] 1 Ch. 286, following *Goldsmiths' Co.* v. *Wyatt*, *supra*).

(*d*) Revenue Act, 1883 (46 & 47 Vict. c. 55), s. 10 (1); Hall-marking of Foreign Plate Act, 1904 (4 Edw. 7, c. 6), s. 1. A statutory declaration that the plate is not intended for sale or exchange must be made in the case of plate exempt because intended for private use (*ibid.*).

(*e*) Revenue Act, 1883 (46 & 47 Vict. c. 55), s. 10 (2). The importer must bear all expenses connected with the assay. Any person bringing a watch case, whether imported or not, to any assay office to be assayed, stamped, or marked, must make a declaration setting forth in what country or place the case was made (Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 8).

(*f*) Revenue Act, 1883 (46 & 47 Vict. c. 55), s. 10.

(*g*) See title FISHERIES, Vol. XIV., p. 618.

(*h*) See title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 528 *et seq.*

(*i*) See title SHIPPING AND NAVIGATION.

SECT. 2. The Duties.

SECT. 2.—*The Duties.*

SUB-SECT. 1.—*Beer* (*j*).

Classification of beer.

1171. For the purposes of the charge of a duty of customs, all beer imported is classified as either (1) mum, spruce or black beer, Berlin white beer and other preparations, whether fermented or unfermented, of a character similar to mum, spruce or black beer, or (2) beers of any other description (*k*).

The duty charged.

1172. Duty is charged on mum, spruce or black beer, Berlin white beer and other beers of that character, according as the original gravity of the preparation exceeded or did not exceed 1,215 degrees (*l*). In the case of beers of any other description, the charge is raised by reference to the quantity and the original gravity of the beer (*m*).

Testing of gravity.

1173. The importer of beer is required to deliver to the proper officer of customs of the port a declaration in the prescribed form of the original gravity of the beer to be imported (*n*). Samples of the beer landed are taken to be officially tested by distillation for original gravity, and the charge for duty is raised on the gravity stated by the importer or that found on testing, whichever is the highest (*o*). If the gravity as ascertained on testing exceeds by

(*j*) For the excise duties on beer, see pp. 613 *et seq.*, *post*. For the law relating to licensing, generally, see title INTOXICATING LIQUORS, Vol. XVIII., pp. 1 *et seq.*

(*k*) The importer is required to specify in his entry to which description any beer imported belongs (Import Code, par. 45); see the text, *infra*.

(*l*) A degree of gravity is taken as equal to the one-thousandth part of the gravity of distilled water at 60° Fahrenheit (Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 14). For definition of beer, see note (*g*), p. 630, *post*; and see *Fairhurst* v. *Price*, [1912] 1 K. B. 404.

(*m*) The rates at present in force are:—

		£	*s.*	*d.*
Where the original gravity of beers of class (1) did not exceed 1,215 degrees .	For every 36 gallons	1	13	0
Where the original gravity exceeded 1,215 degrees	,, ,,	1	18	8
For beers of class (2) where the original gravity was 1,055 degrees . . .	,, ,,	0	8	3

And so in proportion for any difference in gravity (Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 3; Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), s. 3; Finance Act, 1896 (59 & 60 Vict. c. 28), ss. 2, 3; Finance Act, 1900 (63 & 64 Vict. c. 7), ss. 3, 4; Finance Act, 1902 (2 Edw. 7, c. 7), s. 3; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 82 (1), (2)). "Original gravity" is the gravity as indicated by the official saccharometer before fermentation has taken place in the beer (Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 6).

(*n*) Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 5 (1). The beer may be delivered from official custody after it has been gauged and sampled, but before the strength is tested, if the importer makes a deposit to cover the duty and hands in a "request note," as in the case of perishable goods, and makes perfect entry and pays the duty chargeable when ascertained. It may also be delivered on payment of duty on an assumed gravity of 1,055 degrees, an adjustment being made when the test of the sample has been completed (Import Code, par. 55).

(*o*) Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 5 (2). The original gravity is obtained by distillation of a sample in the manner prescribed in the Inland Revenue Act, 1880 (43 & 44

2 per cent. that declared by the importer, the beer is forfeited, and if the gravity so ascertained exceeds the gravity declared by more than 5 per cent., the importer or person bringing the beer in and the person declaring are liable to a penalty of £100 (*p*).

Calculation of Charge.

1174. The quantity of beer to be charged is calculated to the gallon, and the duty is assessed and paid before delivery of the beer from official custody, except where entry has been made by bill of sight and a deposit made to cover the duty which might be found to be due when the testing is completed (*q*).

Drawback on subsequent export.

1175. When beer which has been imported into Great Britain or Ireland is subsequently exported as merchandise or shipped for use as ships' stores or removed to the Isle of Man, a repayment of the duty paid on import is made by way of drawback (*r*).

SUB-SECT. 2.—*Chicory.*

Chicory.

1176. Imported chicory is chargeable with a customs duty, which varies according as the chicory is raw, or kiln-dried only, or is roasted to such a degree as to be fit for grinding (*s*).

Warehousing and payment of duty.

When imported, chicory may be warehoused in a bonded warehouse, either for exportation as merchandise or as ship's stores or to be subsequently delivered for home consumption (*a*); whenever delivered for home consumption, duty must be paid on the account taken at the landing (*b*).

Vict. c. 20), s. 15. It is the practice to take representative samples from some of the packages only of beers of the same mark; and where spruce beer is entered by the importer at the higher rate of duty, and the officer is satisfied that the liquid really is spruce beer, no sample is taken (Import Code, par. 49).

(*p*) Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 5 (3). This might apply to a factor for a foreign merchant (*A.-G.* v. *Weeks* (1726), Bunb. 223; see *Budenberg* v. *Roberts* (1866), L. R. 1 C. P. 575). As to the recovery of penalties, see pp. 737 *et seq.*, *post.*

(*q*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 58. In such a case it is the practice to require a deposit to be made to cover the duty calculated on an original gravity of 1,110 degrees. The importer does not cease to be liable for the full duty (*A.-G.* v. *Hurel* (1843), 11 M. & W. 585). The rate of drawback at present in force is :—

	£	*s.*	*d.*
For every 36 gallons of an original gravity of 1,055 degrees	0	8	0

And so in proportion for any difference in gravity (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 82); and see p. 613, *post.*

(*r*) Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 6. As to drawbacks, see pp. 697 *et seq.*, *post.*

(*s*) The rates at present in force are :—

	£	*s.*	*d.*
For raw or kiln-dried chicory . . . the cwt.	0	13	3
,, roasted or ground ,, . . . the lb.	0	0	2

(Customs Tariff Act, 1876 (39 & 40 Vict. c. 35), Sched.). Chicory is considered to be "dried" when it has been dried by any means and not completely roasted to such a degree as to be fit for grinding to powder. "Roasted" chicory means chicory so completely roasted as to be fit for grinding to powder, whether it has been ground or reduced to powder or not (Excise Act, 1860 (23 & 24 Vict. c. 113), s. 21).

(*a*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 91. Chicory in bond is allowed to be roasted under special conditions for exportation.

(*b*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 98.

SECT. 2. The Duties.

Chicory extract or essence.

1177. The importation of extracts or essences of chicory is forbidden except in transit or to be warehoused for exportation only (*c*).

SUB-SECT. 3.—*Cocoa.*

How chargeable.

1178. Imported cocoa is chargeable with customs duty under the heads of cocoa, husks and shells, cocoa butter, and preparations of cocoa or chocolate (*d*).

Warehousing and payment of duty.

If not immediately cleared for home consumption on import, it may be warehoused, and while in bond may be mixed, bulked, and repacked for exportation or for home consumption. A deficiency in the quantity due to loss in the operation is allowed in the case of cocoa for exportation, but, where cocoa is cleared from warehouse for home consumption, duty is charged on the account taken at the landing (*e*).

SUB-SECT. 4.—*Coffee.*

How chargeable.

1179. Coffee imported is liable to customs duty either as raw coffee, kiln-dried, roasted or ground coffee, or as mixtures of coffee and chicory, or of either of them with any other vegetable substance, roasted and ground (*f*).

(*c*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 42. This prohibition is not regarded as applying to chicory paste made from roasted and crushed chicory. For mixtures of coffee and chicory, see pp. 617, 618, *post*.

(*d*) The rates of duty in force are :—

		£	s.	d.
Cocoa	the lb.	0	0	1
Husks and shells	the cwt.	0	2	0
Cocoa butter	the lb.	0	0	1
Preparations of cocoa	the cwt.	0	9	4

(Customs Tariff Act, 1876 (39 & 40 Vict. c. 35), Sched. ; Finance Act, 1896 (59 & 60 Vict. c. 28), s. 7 ; Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 2, applying the Finance Act, 1901 (1 Edw. 7, c. 7), s. 7). In the case of confectionery containing chocolate a charge is raised for duty at the rate of :—

		£	s.	d.
When the chocolate exceeds 50 per cent. of the total net weight	the lb.	0	0	1¾
When the chocolate does not exceed 50 per cent. of the total net weight	,,	0	0	1¼.

An additional ½*d.* per lb. is charged where spirits have been used in the manufacture of the chocolate, and this may be increased if the result of the analysis of a sample shows that it does not cover the rate of duty on the quantity of spirits used.

(*e*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 95, 97, 98. The operations referred to may also be performed on the cocoa before the landing account is taken (*ibid.*).

(*f*) The rates now in force are :—

		£	s.	d.
Coffee, raw	the cwt.	0	14	0
,, kiln-dried, roasted or ground	the lb.	0	0	2
Coffee and chicory (or other vegetable substances) roasted and ground ; mixed.	,,	0	0	2

(Customs Tariff Act, 1876 (39 & 40 Vict. c. 35), Sched.). In addition to the import duty on coffee mixtures, the excise label duty of ½*d.* the ¼ lb. (see note (*d*), p. 617, *post*) must be paid upon any mixture containing coffee or chicory and any article or substance intended as a substitute for or imitation of coffee or chicory, which is sold or kept for sale in the United Kingdom (Customs and Inland Revenue Act, 1882 (45 & 46 Vict. c. 41), s. 5) ; and see p. 617, *post*.

Coffee essence.

1180. The importation of coffee in the form of an extract or essence of coffee is prohibited, except in transit or to be warehoused for subsequent exportation (*g*).

Warehousing and payment of duty.

1181. If coffee is warehoused on importation it may be husked and an allowance made for loss of weight in the operation. Otherwise the duty chargeable on subsequent delivery from warehouse for home consumption is calculated on the account taken at landing (*h*).

Drawback.

1182. When roasted coffee upon which duty has been paid on importation is subsequently exported, drawback of the duty is allowed at the current rate, provided the coffee is not mixed with chicory or any other substance (*i*).

SUB-SECT. 5.—*Dried Fruit* (*k*).

How chargeable.

1183. A customs duty is chargeable on the importation of currants, figs and fig-cake, plums (including greengages), damsons, mirabelles, and dried, crystallised or glacé apricots, prunellas, prunes and raisins as preserved fruit (*l*).

SUB-SECT. 6.—*Motor Spirit.*

Rate of duty.

1184. Motor spirit imported is liable to a customs duty of 3*d.* per gallon (*m*).

Remission of full duty.

The full duty is, however, remitted or repaid when the spirit is used for any purpose other than supplying motive power for motor

(*g*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 42.

(*h*) *Ibid.*, ss. 80, 98. Coffee may be roasted in bond for exportation or ship's stores, and any loss in weight not exceeding 30 per cent. allowed free of duty (*ibid.*).

(*i*) The rate of drawback at present in force is :—

	£	*s.*	*d.*
For every 100 lbs.	0	14	0

(Finance Act, 1897 (60 & 61 Vict. c. 24), s. 2). As to drawbacks, see pp. 697 *et seq.*, *post.*

(*k*) This only applies to fruit preserved without sugar. Dried fruit preserved with sugar is chargeable with duty on the fruit, and sugar duty is also levied on the added syrup (Finance Act, 1901 (1 Edw. 7, c. 7), s. 2 (2)) ; see pp. 604 *et seq.*, *post.*

(*l*) The duty on currants is 2*s.* the cwt. (Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8), s. 3) ; on the other enumerated fruits, 7*s.* the cwt. (Customs Tariff Act, 1876 (39 & 40 Vict. c. 35) ; Finance Act, 1901 (1 Edw. 7, c. 7)). Tinned and bottled apricots in syrup or water and apricot pulp are not liable as preserved fruit ; but sugar duty is chargeable on any sugar which is present (*ibid.*, s. 7). Plums and prunes when delivered from warehouse for home consumption are chargeable with duty calculated on the weight found on landing ; raisins, currants, figs and fig-cake may be delivered at the option of the merchant upon payment either of the duty calculated on the landing account or on the delivery account (Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 98).

(*m*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 84 (1). "Motor spirit" means any inflammable hydrocarbon (including any mixture of hydrocarbons and any liquid containing hydrocarbon) which is capable of being used for providing reasonably efficient motive power for a motor car (*ibid.*, s. 85 (7)). Apparently, ordinary paraffin oil will become liable to this duty as soon as an efficient carburettor has been invented for using it in motor cars.

SECT. 2. The Duties.

cars (*n*), or for supplying motive power to any motor fire engine kept by a local authority while it is kept by them for the purposes of their fire brigade service (*o*).

Remission of half the duty.

Half the duty is remitted or repaid when the spirit is used for supplying motive power (1) to a motor car duly inscribed with the name and address of the owner and which is constructed or adapted for use, and is used solely, for the conveyance of any goods or burden in the course of trade or husbandry; (2) to a hackney carriage within the meaning of the Customs and Inland Revenue Act, 1888 (*p*), s. 4, while it is standing or plying for hire in a public place; (3) to a motor car used partly as a trade cart and partly as a hackney carriage; and (4) to a motor car kept by a duly qualified medical practitioner while it is being used by him for the purposes of his profession (*q*).

Payment of duty.

1185. The duty is payable on delivery from the bonded warehouse, but the Commissioners may make regulations providing for its delivery duty free or on payment of duty at half the rate (*r*).

SUB-SECT. 7.—*Playing Cards.*

Imported cards.

1186. Imported playing cards are detained in the custody of the customs authorities until the duty payable on each pack has been paid, and this is indicated by their being enclosed in excise wrappers (*s*).

Unlawful sale of cards.

Any such cards, if offered, kept, or exposed for sale without being enclosed in wrappers, are forfeited and may be seized, and the person so offering, keeping, or exposing is liable, if not a licensed maker of playing cards, to a penalty of £10, and if a licensed maker to a penalty of £20 (*t*).

SUB-SECT. 8.—*Saccharine.*

How chargeable.

1187. Saccharine and any mixture containing saccharine, and any

(*n*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 85 (1).

(*o*) Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 12. As to fire brigades, see titles METROPOLIS, Vol. XX., pp. 417, 418; PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 548 *et seq.*

(*p*) 51 & 52 Vict. c. 8; see title STREET AND AERIAL TRAFFIC.

(*q*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. V., Part I.

(*r*) *Ibid.*, s. 85 (2). The regulations provide for the delivery of the spirit from warehouse, duty free or at the half rate of duty, in quantities of not less than 100 gallons to refiners, and not less than 8 gallons to an authorised dealer or user (Stat. R. & O., 1910, p. 679, r. 14). For the excise duties, see p. 620, *post.*

(*s*) Customs Consolidation Act, 1853 (16 & 17 Vict. c. 107), s. 115. The duty payable is 3*s.* 9*d.* on every dozen packs imported (Customs Tariff Act, 1876 (39 & 40 Vict. c. 35)). A "pack of cards" means any quantity or number of cards not exceeding fifty-two (Revenue Act, 1862 (25 & 26 Vict. c. 22), s. 28). For the excise duties, see p. 621, *post.*

(*t*) Customs Consolidation Act, 1853 (16 & 17 Vict. c. 107), s. 114; Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 286. This does not apply to *bonâ fide* toy cards not exceeding in length $1\frac{3}{4}$ inches, or in width $1\frac{1}{4}$ inches (Revenue Act, 1862 (25 & 26 Vict. c. 22), s. 36). The possession of forged or counterfeit wrappers is an offence under the Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 13 (Customs Consolidation Act, 1853 (16 & 17 Vict. c. 107), s. 116); and see p. 703, ***post.*** As to the recovery of penalties, see pp. 737 *et seq.*, *post.*

substance of a like nature or use, is liable on importation to a customs duty at a fixed rate (*u*).

Importation regulations.

1188. The Commissioners may make regulations as to the importation, labelling, wrapping and sale of any saccharine, including substances of a like nature or use, and may by these regulations apply to the labels any of the laws relating to stamps (*v*). Any person importing saccharine contrary to such regulations, or selling, exposing for sale, offering or keeping for sale, saccharine so imported, is liable to a penalty of £50, and the saccharine in respect of which the offence is committed is forfeited (*x*).

Where an offence is committed in respect of a quantity of saccharine which does not exceed 5 lbs., justices may try the case summarily without any information or direction of the Commissioners, and, on conviction, may impose a penalty of not less than the single, nor more than the treble, value of the goods, including the duty; and if the offence is in respect of more than 5 lbs. the offender is liable to a penalty of treble the duty-paid value of the goods or of £100 at the option of the Commissioners. If more than 20 lbs. of saccharine are in question the justices have no power to mitigate the penalty (*a*).

1189. Where goods, other than beer, in which any duty-paid saccharine has been used are exported or deposited in a bonded warehouse for use as ship's stores or are removed to the Isle of Man, a drawback equal to the duty paid on the saccharine used is paid to the person exporting or depositing (*b*).

SUB-SECT. 9.—*Spirits.*

How chargeable.

1190. A customs duty at varying rates, depending on the denomination of the spirits and upon whether they are imported in cask or in bottles (*c*), is chargeable upon all spirits, including

(*u*) The rate at present in force is 7*d.* per ounce (Finance Act, 1901 (1 Edw. 7, c. 7); Finance Act, 1908 (8 Edw. 7, c. 16)). Where saccharine is used as a preservative in, or for sweetening, composite goods, such as canned fruits, duty is charged on the quantity found by analysis to have been used, provided it does not exceed 1 per cent.; see p. 604, *post.*

(*v*) Finance Act, 1901 (1 Edw. 7, c. 7), s. 8. By regulations of the Commissioners dated 20th January, 1903, saccharine must be specially reported, and may be imported only at the ports of Dover, Folkestone, Goole, Grangemouth, Grimsby, Harwich, Hull, Leith, London, Newhaven, Southampton, and West Hartlepool (Import Code, par. 111). It must be in packages containing not less than 11 lbs., and may not be packed with goods of any other description. All saccharine must be warehoused on importation, and, if afterwards delivered out of bond for home consumption, duty must be paid on the landing account. But it may be sent from warehouse for exportation, and for this purpose it may be repacked in bond into packages of 1 lb. net weight each. For the excise duties, see p. 622, *post.*

(*x*) Finance Act, 1901 (1 Edw. 7, c. 7), s. 8. As to the recovery of penalties, see pp. 737 *et seq.*, *post.*

(*a*) Revenue Act, 1906 (6 Edw. 7, c. 20), s. 5, applying Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 233.

(*b*) Finance Act, 1901 (1 Edw. 7, c. 7), Sched. III. As to drawbacks, see pp. 697 *et seq.*, *post.*

(*c*) Spirits are regarded as imported in bottles when they are imported in bottles of any size, or in any other vessels (including kegs) of

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mixtures and preparations containing spirits, and including naphtha or methylic alcohol purified so as to be potable, on their importation into the United Kingdom (*d*).

Basis of charge.

Except in the case of perfumed and other untested spirits, the charge for duty is raised upon the quantity of spirits calculated at proof strength (*e*).

a capacity not exceeding two gallons. As to customs duty on substances prepared with spirits, see p. 602, *post*.

(*d*) The rates of duty at present in force are for :—

	£	s.	d.	£	s.	d.
	In cask.			In bottles.		
Brandy the proof gallon	0	15	1	0	16	1
Rum ,, ,,	0	15	1	0	16	1
Imitation rum ,, ,,	0	15	2	0	16	2
Geneva ,, ,,	0	15	2	0	16	2
Additional in respect of sugar used in sweetening any of the above tested for strength, if sweetened to such an extent that the spirit thereby ceases to be an enumerated spirit, the proof gallon	0	0	1	0	0	1
Unenumerated spirits :—						
Sweetened the proof gallon (Including liqueurs, cordials, mixtures and other preparations containing spirits ; if tested)	0	15	3	0	16	3
Not sweetened the proof gallon (Including liqueurs, cordials, mixtures, and other preparations containing spirits, provided such spirits can be shown to be both unenumerated and not sweetened ; if tested)	0	15	2	0	15	2
Liqueurs, cordials, mixtures and other preparations containing spirits, not sweetened, provided such spirits are not shown to be unenumerated ; if tested the proof gallon	0	15	2	0	16	2
Liqueurs, cordials, mixtures, and other preparations containing spirits in bottle, entered in such a manner as to indicate that the strength is not to be tested the liquid gallon		—		1	1	5
Perfumed spirits the liquid gallon	1	4	1	1	5	1
Any importations of naphtha or methylic alcohol purified so as to be potable are taken under the heading of unenumerated spirits.						

(Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 7 ; Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8), s. 4 ; Finance Act, 1899 (62 & 63 Vict. c. 9), s. 3 ; Finance Act, 1900 (63 & 64 Vict. c. 7), s. 5 ; Finance Act, 1902 (2 Edw. 7, c. 7), s. 5 ; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 81). The additional customs duty on spirits removed or imported into the Isle of Man (see p. 592, *ante*), imposed by the Isle of Man Customs Act, 1900 (63 & 64 Vict. c. 31), is continued to the 1st August, 1913, by the Isle of Man (Customs) Act, 1912 (2 & 3 Geo. 5, c. 9), s. 1.

(*e*) "Proof" strength means the strength of proof as ascertained by Sykes's hydrometer, or by any means described in regulations published by the Commissioners of Customs and Excise (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 3 ; Finance Act, 1907 (7 Edw. 7, c. 13), s. 4 ; see *Newby* v. *Sims*, [1894] 1 Q. B. 478, *per* DAY, J., at p. 481). The apparent strength of foreign spirits is increased by a percentage called "obscuration" which corresponds to the strength-obscuring matter found to be present when the spirits are tested. For excise duties on spirits, see pp. 623 *et seq.*, *post*. If perfumed spirits are, on being tested, found to be of a strength less than

Importation regulations.

1191. Spirits, other than cordials or perfumed or medicinal spirits, may not be imported unless in ships of 40 tons burden at least, and in casks or other vessels capable of containing 9 gallons at least, or in glass or stone bottles which are properly packed in cases (*f*).

Clearance and use of spirits duty free.

1192. Upon importation, the spirits may be at once cleared for home consumption on payment of the duty, or they may be warehoused in an approved bonded warehouse duty free (*g*). Spirits warehoused may be used in bond without payment of duty in fortifying wine or lime or lemon juice (*h*). They may also be methylated duty free under the regulations (*i*), or may be sent without payment of duty under bond for exportation as merchandise or for ship's stores (*k*). They may be removed for use in an art or manufacture under the Finance Act, 1902 (*l*), s. 8, or for methylation at the premises of a licensed methylator (*m*); but in the case of spirits delivered for use in this way, or for methylation, payment is required to be made before delivery of the difference between the customs duty on the spirits at the time of delivery and the duty of excise which would be chargeable upon spirits of the same kind (*n*).

Remission of duty.

1193. Spirits may be operated upon in bond under the regulations, and the duty remitted upon any spirits lost in the course of the operation where the loss does not exceed 1 per cent. in the case of spirits racked or blended and 2 per cent. in the case of spirits bottled (*o*); and the Commissioners may, on the request of the

proof, they are admitted at the rate of duty appropriate to a spirit mixture tested. Where foreign spirits which have been bottled in bond are subsequently delivered for home consumption, an additional duty of 3*d.* for every one dozen quart bottles, or two dozen pint bottles, is levied on them (Customs and Inland Revenue Act, 1880 (43 Vict. c. 14), s. 3). As to customs duties on wine, see note (*g*), p. 609, *post.*

(*f*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 42; Finance Act, 1896 (59 & 60 Vict. c. 28), s. 4. Absolute alcohol is regarded as medicinal spirits, and is not restricted as to the size of the package in which imported. It is charged to duty, without testing, at 74·0 over proof (Import Code, par. 145).

(*g*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 57; Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 18; Revenue Act, 1903 (3 Edw. 7, c. 46), s. 4. Spirits of any kind directly imported for use duty free in some art or manufacture under the Finance Act, 1902 (2 Edw. 7, c. 7), s. 8, must be in all cases warehoused (Import Code, par. 169).

(*h*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 95.

(*i*) Only unsweetened spirits of a strength not less than 50 over proof, or rum or imitation rum of a strength not less than 20 over proof, may be methylated (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 123 (1), (5); Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8), s. 31).

(*k*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 97. If exported in cask, each cask must contain not less than 9 gallons (Revenue Act, 1883 (46 & 47 Vict. c. 55), s. 3).

(*l*) 2 Edw. 7, c. 7. Spirits removed for this purpose must not be less than 9 bulk gallons; but this does not apply to absolute alcohol or to methyl alcohol purified so as to be potable, which may be removed from warehouse in the original packages as imported (Regulations of the Commissioners, August, 1906).

(*m*) See pp. 639 *et seq.*, *post.*

(*n*) Finance Act, 1902 (2 Edw. 7, c. 7), s. 8 (1). This does not apply to foreign methylic alcohol, which may be delivered for use in arts or manufactures duty free (Revenue Act, 1906 (6 Edw. 7, c. 20) s. 1 (2)).

(*o*) Spirits Act, 1880 (43 & 44 Vict. c. 24), ss. 64, 65, 66, 67, 69.

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importer or owner, allow the destruction in bond of any spirits not considered to be worth the duty, and they may remit the duty which would be chargeable upon such spirits on delivery (*p*).

Delivery account. Charge for duty.

1194. Upon delivery of spirits from warehouse for any purpose, an account of them must be taken, and where the delivery is for home consumption the charge for duty is to be raised on the quantity at proof then found, unless it should appear that any deficiency between the delivery account and the account taken on landing was caused by illegal or improper means (*q*). In the case of delivery for exportation, no such deficiency nor any part thereof is to be charged with duty, unless the officers of customs have reasonable ground to suppose that it arose from illegal abstraction (*r*).

British spirits re-imported.

1195. British spirits re-imported are treated as foreign, and duty is charged on them at the appropriate rate accordingly, unless they are brought in on the issue of a "bill of store," and on repayment of the excise allowance granted on the exportation (*s*).

SUB-SECT. 10.—*Substances Prepared with Spirits.*

How chargeable.

1196. A customs duty at fixed rates is chargeable upon certain articles in the manufacture or preparation of which spirits have been used, and such duty is chargeable whether any spirits remain in the final product or not (*t*).

(*p*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 95. For remission of duty on goods accidentally lost, see p. 590, *ante*.

(*q*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 98. Allowances are in practice granted on all spirits except bottled spirits on delivery from warehouse according to a fixed scale. The rate allowed depends partly upon the content of the cask containing the spirits, and partly upon the time that has elapsed since the landing account upon which the spirits were warehoused was taken. All deficiencies in excess of the scale are charged with duty. Where spirits have been racked, vatted, or blended while in warehouse, the account taken at the completion of the operation is substituted for the landing account. Where any deficiency found in warehoused goods cannot be accounted for by natural waste or other legitimate cause, the occupier of the warehouse may be called upon to pay the duty forthwith upon it (Revenue Act, 1909 (9 Edw. 7, c. 43), s. 2).

(*r*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 99.

(*s*) Customs and Inland Revenue Act, 1879 (42 & 43 Vict. c. 21), s. 6; Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 59. The spirits brought in must be warehoused on re-importation. A "bill of store" (Form No. 39, sale) is required in all cases of dutiable British goods exported and brought back into the United Kingdom if they are not to be regarded as foreign goods and liable to duties of customs accordingly. It is issued in the manner and form directed by the Commissioners, who must be satisfied that the goods are of British manufacture. It may be either for goods on which duty has been paid prior to exportation and on which no drawback has been received, or for goods on which drawback might have been received. In the case of goods of the latter class repayment of the drawback must be made before the bill is issued. The goods must in all cases have been brought back within five years from the time of exportation (Customs and Inland Revenue Act, 1879 (42 & 43 Vict. c. 21), s. 6).

(*t*) These are :—

	£	*s.*	*d.*
Transparent soap the lb.	0	0	3

(Customs Tariff Act, 1876 (39 & 40 Vict. c. 35); Finance Act, 1901 (1 Edw. 7, c. 7), s. 7 (1)).

SUB-SECT. 11.—*Sugar.*

SECT. 2. The Duties.

How chargeable.

1197. A customs duty is charged on sugar under the heads of (1) sugar, including sugar candy, where the rate depends upon the degrees of polarisation; (2) molasses, invert sugar and sugar extracts, where the rate is fixed according to the sweetening matter in the goods; and (3) glucose, where the rate depends upon whether the sugar is solid or liquid (*u*).

		£	*s.*	*d.*
Chloral hydrate	the lb.	0	1	9
Chloroform	„	0	4	4
Collodion	the gall.	1	14	11
Ether, acetic	the lb.	0	2	7
„ butyric	the gall.	1	1	10
„ sulphuric	„	1	16	6
Ethyl, iodide of	„	0	19	0
„ bromide	the lb.	0	1	5
„ chloride	the gall.	1	1	10

(Finance Act, 1900 (63 Vict. c. 7), s. 5; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. III., Part II.).

(*u*) The rates of duty at present in force are, for:—

		£	*s.*	*d.*
Glucose, solid	the cwt.	0	1	2
„ liquid	„	0	0	10
Molasses and invert sugar and all other sugar and extracts from sugar which cannot be completely tested by the polariscope and on which duty is not otherwise charged:—				
If containing 70 per cent. or more of sweetening matter	„	0	1	2
If containing less than 70 per cent. and more than 50 per cent. of sweetening matter	„	0	0	10
If containing not more than 50 per cent. of sweetening matter	„	0	0	5
Sugar:—				
Not exceeding 76 degrees of polarisation	„	0	0	10
Exceeding 76 and not exceeding 77	„	0	0	10·9
„ 77 „ „ 78	„	0	0	11·2
„ 78 „ „ 79	„	0	0	11·6
„ 79 „ „ 80	„	0	0	11·9
„ 80 „ „ 81	„	0	1	0·3
„ 81 „ „ 82	„	0	1	0·6
„ 82 „ „ 83	„	0	1	1
„ 83 „ „ 84	„	0	1	1·4
„ 84 „ „ 85	„	0	1	1·8
„ 85 „ „ 86	„	0	1	2·2
„ 86 „ „ 87	„	0	1	2·6
„ 87 „ „ 88	„	0	1	3
„ 88 „ „ 89	„	0	1	3·4
„ 89 „ „ 90	„	0	1	4
„ 90 „ „ 91	„	0	1	4·5
„ 91 „ „ 92	„	0	1	5
„ 92 „ „ 93	„	0	1	5·6
„ 93 „ „ 94	„	0	1	6·1
„ 94 „ „ 95	„	0	1	6·6
„ 95 „ „ 96	„	0	1	7·1
„ 96 „ „ 97	„	0	1	7·7
„ 97 „ „ 98	„	0	1	8·2
„ 98 „ „ —	„	0	1	10

(Finance Act, 1901 (1 Edw. 7, c. 7), s. 2; Finance Act, 1908 (8 Edw. 7, c. 16), Sched.). Duty is not chargeable on molasses cleared for use by a

SECT. 2. **The Duties.**

Prohibition of importation.

1198. The King in Council may by order prohibit the importation of sugar from certain countries, subject to any provision which may be made by Parliament to impose a special duty on such sugar in lieu of prohibition (*v*).

Clearance and warehousing.

1199. On importation sugar may either be cleared for home consumption on payment of duty, or it may be warehoused for exportation or for home consumption. While in bond, various operations may be performed on the sugar, and the duty chargeable on any loss thereby occasioned is remitted unless fraud is suspected (*a*).

Charge on delivery for home consumption.

1200. On delivery from the bonded warehouse for home consumption, duty is chargeable according to the quantity ascertained either at the time of landing or of actual delivery (*b*). Where the sugar is removed under bond duty free from a warehouse to a sugar refinery or factory, it is liable on delivery for home consumption from the refinery or factory to duty at the same rate as that which would be payable on importation (*c*).

Drawback on molasses.

1201. Repayment of duty by way of drawback is made upon molasses produced by a refiner of sugar in Great Britain or Ireland from sugar on which duty has been paid on importation, and delivered by him to be used solely for purposes of food for stock (*d*), and in respect of molasses produced by a refiner otherwise than from non-duty paid sugar in a bonded refinery (*e*) and delivered by him to a licensed distiller for use in the manufacture of spirits (*f*).

Drawback on exports, deposits for ship's stores etc.

A drawback equal to the duty on sugar of the like polarisation is also payable upon sugar which has passed a refinery in Great Britain or Ireland, and on which the proper import duties have been paid, when it is exported, deposited in warehouse for ship's stores, or removed to the Isle of Man (*g*).

SUB-SECT. 12.—*Composite Sugar Goods.*

How chargeable.

1202. Composite sugar goods are liable on importation to customs duties at various rates fixed by the Treasury to cover the duty which would be payable on the sugar used in the manufacture or

licensed distiller, or for use solely for feeding stock (Finance Act, 1901 (1 Edw. 7, c. 7), s. 2 (1); Revenue Act, 1903 (3 Edw. 7, c. 46), s. 1 (1)).

(*v*) Sugar Convention Act, 1903 (3 Edw. 7, c. 21), s. 1 (1). This does not apply to molasses, nor, unless expressly mentioned in the order, to sugar of any kind in transit (*ibid.*, s. 1 (4)). Notice to withdraw from the Sugar Convention has been given by the British Government.

(*a*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 95.

(*b*) Revenue Act, 1903 (3 Edw. 7, c. 46), s. 3, applying the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 98.

(*c*) Sugar Convention Act, 1903 (3 Edw. 7, c. 21), s. 2.

(*d*) Revenue Act, 1903 (3 Edw. 7, c. 46), s. 1. As to drawbacks, see pp. 697 *et seq.*, *post.*

(*e*) Under the provisions of the Sugar Convention Act, 1903 (3 Edw. 7, c. 21), s. 2.

(*f*) Finance Act, 1901 (1 Edw. 7, c. 7), Sched. II. In the case of molasses used either for stock feeding or by a distiller in the manufacture of spirits, the rate of drawback at present allowed is 5*d.* the cwt. (Finance Act, 1908 (8 Edw. 7, c. 16), Sched.).

(*g*) Finance Act, 1901 (1 Edw. 7, c. 7), Sched. II.

preparation of the goods; and articles liable to duty in this way may be further chargeable with a duty because of the use in their preparation of more than one dutiable constituent (*h*).

(*h*) Finance Act, 1901 (1 Edw. 7), s. 7 (1); and see Customs Tariff Act, 1876 (39 & 40 Vict. c. 35), Sched. Where goods imported are composed of any article liable to duty as a part or ingredient thereof, they are chargeable with the full duty payable on such article, and if composed of more than one article liable to duty, then with the full duty payable on the article charged with the highest rate of duty. The rates in force for composite goods are as follows:—

		£	s.	d.
Blacking, solid, containing sugar or any other sweetening matter	the cwt.	0	0	5
,, liquid, containing sugar or any other sweetening matter	,,	0	0	5
(Together with the duty on any proof spirit (see note (*e*), p. 600, *ante*) contained therein)				
Candied or drained peel	,,	0	1	4
Caramel, solid	,,	0	1	10
,, liquid	,,	0	1	4
Cherries, drained	,,	0	1	0
Chutney	,,	0	0	10
Cocoa nut, sugared	,,	0	0	10
Confectionery made from sugar and containing no other ingredients except flavouring	,,	0	1	10
As to Chocolate, see note (*d*), p. 596, *ante*.				
Confectionery, hard, such as:—				
Sugared almonds (except as below), caraway seeds, etc.	,,	0	1	10
Sugared almonds, on the entry for which the importer has declared that the sugar coating does not exceed 72 per cent. of the total net weight	,,	0	1	4
Confectionery, soft, namely:—				
A.B. gums imported in bulk in barrels or cases, on the entry for which the importer has declared that duty on the combined quantity of sugar and glucose used in the manufacture of the goods did not exceed the rate of 10*d.* the cwt.	,,	0	0	10
Other A.B. gums. Caramels. Chewing gums. Jelly beans. Turkish delight etc.	,,	0	1	4
Flowers, as violets and rose petals etc., in crystallised sugar, as crystallised fruit	,,	0	1	10
Fruit, canned and bottled, other than fruit liable to duty as such (see p. 597, *ante*), preserved in thin syrup, if the importer has declared on the entry that it does not contain more than 12 per cent. of added sugar	,,	0	0	3
In other cases in thin syrup	,,	0	0	5
Fruits, mixed, such as "Metz Fruits Assorted," and bottled "Assorted Fruits in Syrup," containing articles liable to two or more distinct rates of duty, the duty on the whole to be levied at the highest rate, but if the various kinds of goods are packed separately, or in such manner that an account can be taken of each kind, the goods are assessed for duty accordingly.				
Confectionery, fig (subject to occasional sampling and test)	,,	0	2	6
Ginger, preserved in syrup or sugar	,,	0	1	4

SECT. 2. **The Duties.**

Basis of charge.

The duty is chargeable upon the net weight as found at the time of delivery of the goods from official custody or upon the landing account weight, at the option of the proprietor (*i*).

Drawback on duty-paid sugar, glucose and molasses.

1203. Where duty-paid sugar, glucose, or molasses have been used in the manufacture of composite goods which are subsequently exported or deposited in warehouse for use as ship's stores, or sent to the Isle of Man, a drawback is paid equal to the duty in respect of the quantity of sugar, glucose, or molasses used in the manufacture (*k*).

SUB-SECT. 13.—*Tea.*

How chargeable.

1204. Tea on importation (*l*) is liable to duty at a rate fixed by an Act which is passed for one year only (*m*); and if warehoused on

		£	s.	d.
Licorice, if declared by the importer not to contain more than 30 per cent. of added sugar or other sweetening matter, subject to occasional sampling and test	the cwt.	0	0	7
Marmalade, jams, and fruit jellies, if not made from fruit (see p. 597, *ante*) liable to duty as such	,,	0	1	4
Marzipan	,,	0	1	1
Milk, condensed, slightly sweetened, whether whole, separated, or skimmed, if declared by the importer not to contain more than 18 per cent. of added sugar, subject to occasional sampling and test	,,	0	0	4
,, condensed, sweetened, whole	,,	0	0	9
,, ,, ,, separated or skimmed	,,	0	0	10
(As to the law governing the importation of adulterated, condensed, or separated milk, see title FOOD AND DRUGS, Vol. XV., pp. 65, 66.)				
Milk powder :—				
If declared by the importer not to contain any added sugar	Free.			
If declared by the importer not to contain more than 36 per cent. of added sugar	,,	0	0	8
In all other instances, and in cases in which the importer wishes to dispense with sampling and test.	,,	0	1	6
Importations entered as free are delivered on a deposit being made of the duty at the rate of 8*d.* the cwt. pending the result of an analysis of a sample.				
Nestlé's Milk Food	,,	0	0	7
Soy, when containing molasses or other sweetening matter	,,	0	0	5
Tamarinds, preserved in syrup	,,	0	0	5

(*i*) Revenue Act, 1903 (3 Edw. 7, c. 46), s. 3.

(*k*) Finance Act, 1901 (1 Edw. 7, c. 7), Sched. II. As to drawbacks, see pp. 697 *et seq.*, *post.*

(*l*) For the restrictions upon the importation of tea extracts, and adulterated or exhausted tea, see title FOOD AND DRUGS, Vol. XV., pp. 68, 69.

(*m*) In the case of tea imported after the lapse of the period for which the annual rate was fixed and before the passing of the Act intended to apply to the next following year, duty is chargeable at the old rate, subject to repayment or readjustment (Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 18. The duty at present payable on tea is at the rate of 5*d.* the lb. (Finance Act, 1912 (2 & 3 Geo. 5, c. 8), s. 1).

The additional customs duty on tea removed or imported into the Isle of Man (see p. 592, *ante*) imposed by the Isle of Man (Customs) Act, 1906 (6 Edw. 7, c. 18), s. 1, is continued until the 1st August, 1913, by the Isle of Man (Customs) Act, 1912 (2 & 3 Geo. 5, c. 9), s. 1.

importation, and subsequently delivered for home consumption on payment of duty, it is chargeable with duty on the account taken on landing (*n*).

SUB-SECT. 14.—*Tobacco.*

1205. Tobacco imported into the United Kingdom is liable to customs duties at various rates, depending upon the description and condition of the article (*o*). How chargeable.

1206. Tobacco may only be imported through certain ports approved (*p*) for the purpose by the Commissioners, and in ships of not less than 120 tons registered tonnage, but smaller ships may be specially licensed for the purpose (*q*). Each package must contain no other goods than tobacco, and must be of a gross weight of not less than 80 lbs. (*r*). Tobacco cut and compressed by mechanical or other means (*s*), snuff work, stalks, extracts, essences, or other concentrations of tobacco, may not be imported except in Restrictions on importation.

(*n*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 86), s. 98.

(*o*) The rates at present in force are :—

		£	*s.*	*d.*
Tobacco, manufactured, namely :—				
Cigars	per lb.	0	7	0
Cavendish or negrohead	,,	0	5	4
Cavendish or negrohead, manufactured in bond	,,	0	4	8
Other manufactured tobacco, namely :—				
Cigarettes	,,	0	5	8
Other sorts	,,	0	4	8
Snuff containing more than 13 lbs. of moisture in every 100 lbs. weight thereof	,,	0	4	5
Snuff not containing more than 13 lbs. of moisture in every 100 lbs. weight thereof	,,	0	5	4
Tobacco, unmanufactured, if stripped or stemmed :—				
Containing 10 lbs. or more of moisture in every 100 lbs. weight thereof	,,	0	3	8½
Containing less than 10 lbs. of moisture in every 100 lbs. weight thereof	,,	0	4	1½
Tobacco, unmanufactured, if unstripped or unstemmed :—				
Containing 10 lbs. or more of moisture in every 100 lbs. weight thereof	,,	0	3	8
Containing less than 10 lbs. of moisture in every 100 lbs. weight thereof	,,	0	4	1

(Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 83, Sched.). The additional customs duty on tobacco removed or imported into the Isle of Man (see p. 592, *ante*) imposed by the Isle of Man (Customs) Act, 1900 (63 & 64 Vict. c. 31), s. 1, is continued until the 1st August, 1913, by the Isle of Man (Customs) Act, 1912 (2 & 3 Geo. 5, c. 9), s. 1.

(*p*) The approved ports are:—Aberdeen, Barrow-in-Furness, Belfast, Bristol, Cardiff, Cork, Dover, Dublin, Folkestone, Glasgow, Goole, Grangemouth, Granton, Greenock, Grimsby, Hartlepool (West), Harwich, Hull, Leith, Liverpool, London, Lynn, Manchester, Newcastle, Newhaven, Newport (Mon.), Plymouth, Portsmouth, Southampton, Sunderland, Swansea.

(*q*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 42, 171. The Commissioners may attach any conditions they think fit to a licence granted by them to a small vessel (*ibid.*).

(*r*) *Ibid.*, s. 42 ; Finance Act, 1896 (59 & 60 Vict. c. 28), s. 5. Tobacco of various kinds may be taken together to make up the legal weight (*ibid.*).

(*s*) Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 1.

SECT. 2. The Duties.

transit or to be warehoused for exportation only (*t*). Cavendish or negrohead tobacco may not be imported if it has mixed with it the leaves of trees or plants other than the tobacco plant, and any person importing or concerned in importing, and any dealer having in his possession such tobacco, is liable to a penalty of treble the value thereof, or £100, at the election of the Commissioners (*u*).

Clearance and warehousing.

1207. Tobacco on importation may either be cleared for home consumption on payment of duty, or be warehoused in an approved bonded warehouse, except in the case of cavendish or negrohead, which must in all cases be warehoused when imported (*a*).

Delivery.

1208. Tobacco in a bonded warehouse may be operated upon under the regulations, and the resulting packages delivered either duty free for exportation or on payment of duty for home consumption (*b*). A package for home consumption must not be of less weight than 80 lbs. gross; and cavendish or negrohead can only be delivered for home consumption in packets not exceeding 1 lb. and not less than 1 oz. in weight each, and duly wrapped and labelled (*c*).

Remission on abandoned tobacco.

1209. Tobacco may be abandoned in warehouse by the importer; when this takes place the duty is remitted, and the tobacco is destroyed within such time and in such manner as the Commissioners may direct (*d*).

Basis of charge.

1210. Tobacco cleared for home consumption is chargeable with duty on the account taken on delivery from warehouse unless the merchant elects to pay on the landing account (*e*).

SUB-SECT. 15.—*Wine.*

How chargeable.

1211. Customs duties are charged on imported wine according to the number of degrees of proof spirit it is found to contain (*f*). An additional duty is levied on wine imported in bottles of

(*t*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 42. But the Commissioners may relax or remove the restrictions on the importation of snuff work and stalks (Finance Act, 1896 (59 & 60 Vict. c. 28), s. 6).

(*u*) Manufactured Tobacco Act, 1863 (26 & 27 Vict. c. 7), s. 9. Cavendish or negrohead containing the prohibited ingredients must be enclosed in labelled wrappers prior to sale or exposure for sale (*ibid.*, s. 6); see note (*p*), p. 679, *post*; and see note (*d*), p. 646, *post*.

(*a*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 12; Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 18; Manufactured Tobacco Act, 1863 (26 & 27 Vict. c. 7), s. 9. All sweetened or flavoured tobacco is regarded as cavendish.

(*b*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 95. The exportation of tobacco may only take place from a port or place approved for the importation of tobacco (Manufactured Tobacco Act, 1863 (26 & 27 Vict. c. 7), s. 1). As to the approved ports, see note (*p*), p. 607, *ante*.

(*c*) Manufactured Tobacco Act, 1863 (26 & 27 Vict. c. 7), s. 4; and see p. 645, *post*.

(*d*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 94, 95.

(*e*) *Ibid.*, s. 98. In practice, the merchant may, if he elects to do so, pay duty on the account as taken on landing or removal of the tobacco.

(*f*) For definition of "proof spirits," see p. note (*t*), p. 623, *post*.

any size, or in other vessels of a capacity not exceeding two gallons (*g*).

Restrictions on importation.

1212. Wine may be imported only into such ports as are approved by the Commissioners for the purpose (*h*).

Clearance and warehousing.

1213. Upon importation it may be cleared for home consumption on payment of duty, or it may be warehoused in a duty free warehouse (*i*). While it is in warehouse it may be racked, or it may be fortified with not more than 10 per cent. of approved spirits for home consumption, provided that the wine when fortified is not raised to a greater degree of strength than 40 per cent. of proof spirit. It may also be bottled, or it may be fortified to a strength beyond 40 per cent., but only for the purpose of being exported (*k*).

How duty charged.

1214. When delivered from warehouse for home consumption on payment of duty, the duty is charged on the account taken on delivery (*l*).

Restrictions on mixtures for sale.

1215. The Commissioners may make regulations prohibiting or restricting the mixture for sale of any British wines with any foreign wine, or the exposure for sale of any such mixture (*m*).

(*g*) The rates at present in force are :—

		£	*s.*	*d.*
Wine :—				
Not exceeding 30 degrees of proof spirit	the gallon	0	1	3
Exceeding 30 degrees but not exceeding 42 degrees of proof spirit	,,	0	3	0
And for every degree or part of a degree beyond the highest above charged, an additional duty	,,	0	0	3
The word "degree" does not include fractions of the next higher degree.				
Wine includes lees of wine.				
Additional—				
On still wine imported in bottles	,,	0	1	0
On sparkling wine imported in bottles	,,	0	2	6

(Finance Act, 1899 (62 & 63 Vict. c. 9), s. 2). When still wine has been made sparkling in bond, it becomes liable on delivery out of warehouse for home consumption to duty at the same rate as imported sparkling wine (Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8), s. 8).

(*h*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 42. In practice, no restriction is placed upon the ports at which wine in bottle may be imported. The following ports have been approved for the importation of wine in cask:—Barrow-in-Furness, Berwick-on-Tweed, Blyth, Bridgwater, Bristol, Cardiff, Carnarvon, Chester, Cowes, Dartmouth, Dover, Exeter, Falmouth, Folkestone, Gloucester, Goole, Grimsby, Harwich, Hayle, Hull, Ipswich, Littlehampton, Liverpool, London, Lowestoft, Lynn, Manchester, Middlesbrough, Newcastle-on-Tyne, Newhaven, Newport (Mon.), North Shields, Penzance, Plymouth, Poole, Portsmouth, Port Talbot, Rochester, Runcorn, Rye, Shoreham, Southampton, South Shields, Stockton, Sunderland, Swansea, Truro, West Hartlepool, Weymouth, Whitehaven, Yarmouth; Aberdeen, Dundee, Glasgow, Grangemouth, Greenock, Leith; Belfast, Cork, Dublin, Galway, Limerick, Newry, Waterford.

(*i*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 77.

(*k*) *Ibid.*, s. 95.

(*l*) *Ibid.*, s. 98. If wine while in bond has been converted into vinegar by the addition to it of acetic acid or commercial vinegar under the regulations, it is delivered for home consumption duty free.

(*m*) Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 10. By regulations of

Part VI.—Excise Duties (*n*).

SECT. 1. Introductory.

SECT. 1.—*Introductory.*

SUB-SECT. 1.—*Excise Entries.*

Duty to make an entry.

1216. A licensed excise trader is generally required to deliver an entry of his business premises to the proper surveying officer of customs and excise; and any person carrying on a trade or business for the carrying on of which an excise entry is required without having made an entry is liable to a penalty of £200 (*o*). Not more than one entry is to be in force for the same premises at the same time (*p*).

Definition of "entry."

1217. An "entry" is a statement in a prescribed form of the premises and plant to be used in the business, distinguishing in each case, by reference to a mark or number, each place, room, vessel or utensil, and defining the use to which each is to be put (*q*).

By whom made.

1218. The entry must be made in the name of the real owner or owners of the business (*r*). In the case of a corporation, the entry is to be under the seal of the corporation and signed by the chairman or a director, or by the secretary or other principal officer (*s*).

the Commissioners, dated 8th March, 1912, a manufacturer for sale of British wines may not (a) mix any British wine with any foreign wine except in the course of manufacture; or (b) in the course of manufacture, mix any foreign wine with any British wine in any quantity exceeding the proportion of 15 gallons of foreign wine to 100 gallons of British wine; or (c) mix any spirits with any British wine except for the sole purpose of fortifying the wine (as to fortifying the wine, see the text, *supra*). Any British wine manufactured in conformity with the regulations may not by reason of the admixture with it of foreign wine be exposed for sale, sold, or sent out otherwise than under the designation of a British wine. As to provisions affecting makers of sweets, see p. 643, *post*; wine dealers and retailers, pp. 680 *et seq.*, *post*; rectifiers and compounders, p. 641, *post*; and dealers in and retailers of spirits, pp. 667 *et seq.*, *post*.

(*n*) For the meaning of the term "excise duties," see note (*n*), p. 587, *ante*.

(*o*) Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 33; Excise Management Act, 1834 (4 & 5 Will. 4, c. 51), s. 6. All vessels and utensils not duly entered and all goods found in unentered vessels or premises are forfeited (Excise Management Act, 1841 (4 & 5 Vict. c. 20), s. 5). As to officers of customs and excise, see pp. 545 *et seq.*, *ante*.

(*p*) Excise Management Act, 1834 (4 & 5 Will. 4, c. 51), s. 8. If a trader absconds without having withdrawn his entry of the premises, the Commissioners of Customs and Excise may permit another person to make entry (*ibid.*, s. 9).

(*q*) Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 21; Excise Management Act, 1834 (4 & 5 Will. 4, c. 51), s. 5. In the case of a distillery, no place or vessel may be entered or used for more than one purpose; see p. 638, *post*.

(*r*) But the ostensible owner is liable to the revenue authorities as if he were the real owner. A minor cannot make a legal entry (Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 20). The Commissioners may allow a married woman to make entry (Excise Management Act, 1841 (4 & 5 Vict. c. 20), s. 7).

(*s*) Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 15. Both the person or persons signing and the corporation are bound by the entry (*ibid.*).

Inspection and use of entered premises.

1219. An officer of customs and excise is authorised to go upon and examine any entered premises and to take account of any dutiable commodities he may find there (*t*). The places and utensils entered must not be used for any other purpose than that specified in the entry (*a*). A trader making entry is responsible for the proper conduct of the business carried on under his licence (*b*).

Avoidance of entry.

1220. The Commissioners of Customs and Excise may cause the entry of any premises to become void by fourteen days' written notice to the person who signed (*c*).

SUB-SECT. 2.—*Official Survey Books.*

Evidence of contents.

1221. The survey books in which surveying officers of customs and excise record particulars of accounts taken by them on their visits to the premises of traders are evidence of their contents in any case concerning the business of the trader which is the subject of the records contained in the books (*d*).

SUB-SECT. 3.—*Recovery Back of Duty Paid.*

Only recoverable by statute.

1222. When duties which are not properly exigible are paid to the revenue they cannot, in the absence of express statutory provision, be afterwards recovered back as money not due and paid under a mistake (*e*); nor can they be recovered from the individual officers to whom they were paid (*f*).

(*t*) Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 22.

(*a*) Excise Management Act, 1834 (4 & 5 Will. 4, c. 51), s. 7. In the case of an entry made since August, 1867, the contents of the entry may be proved by production of the official entry book (Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 12).

(*b*) *A.-G.* v. *Siddon* (1830), 1 Cr. & J. 220; *A.-G.* v. *Riddle* (1832), 2 Cr. & J. 493; *Advocate-General* v. *Grant* (1853), 15 Dunl. (Ct. of Sess.) 980; and he would not escape the responsibility to which he is liable as an excise trader by neglecting to make entry (*A.-G.* v. *Hayler* (1816), Manning, Exchequer Practice, 226).

(*c*) Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 15. The notice must be delivered at the entered premises.

(*d*) *R.* v. *Grimwood* (1815), 1 Price, 369. But this is confined to what are properly matters of survey (*Strother* v. *Willan* (1814), 4 Camp. 24).

(*e*) *National Bank of Scotland* v. *Lord Advocate* (1892), 30 Sc. L. R. 579. It makes no difference that the money had been paid under protest, where it was not extorted *colore officii* (*Whiteley, Ltd.* v. *R.* (1909), 26 T. L. R. 19). But it is the practice to repay the duty on the unexpired portion of a licence when during the currency of the licence another is taken out which confers privileges in excess of and including those granted by the licence already in force. And where an excise licence ceases to be in force owing to the justices' licence on which it was granted having expired, repayment is made of a proportional part of the licence duty, except where the justices' licence was forfeited on a conviction of the holder (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 22; Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 7). Special provision is made for the repayment of the duty paid on beer, spirits, glucose and saccharine in certain cases; see pp. 615, 618, 622, 625, *post*). As to drawbacks and excise allowances, see pp. 697 *et seq.*, *post*. As to the recovery of money paid under mistake, see title MISTAKE, Vol. XXI., pp. 29 *et seq.*

(*f*) *Whitbread* v. *Brooksbank* (1774), 1 Cowp. 66, 69; *Greenway* v. *Hurd* (1792), 4 Term Rep. 553; and see title PUBLIC AUTHORITIES AND PUBLIC OFFICERS, Vol. XXIII., p. 315.

SECT. 1. Introductory.

SUB-SECT. 4.—*Signboards.*

Signboards.

1223. Sellers of tobacco, retailers of sweets, and all excise traders who make entry of their premises, with the exception of methylated spirit retailers, are required to put up signboards over the premises occupied by them for the purposes of their respective trades. The signboard must set out in legible letters at least one inch long the full name of the trader and that he is licensed to carry on the trade to which his licence applies (*g*).

SUB-SECT. 5.—*Grant of Licences.*

By whom licences are granted.

1224. Excise licences, with the exception of those transferred to the county councils in England and Wales under the Finance Act, 1908 (*h*), s. 6, are granted by the Commissioners of Customs and Excise or by such persons as are appointed by them for that purpose (*i*).

SUB-SECT. 6.—*Compensation Fund Charges.*

Payment with licence duty.

1225. In the case of an intoxicating liquor licence for consumption on the premises, granted for the first time since the 15th August, 1904, other than a licence for the sale of wine alone or of sweets alone, the compensation fund charge at the appropriate rate must be paid in full together with and as part of the duty payable on the grant of the excise licence (*j*).

SUB-SECT. 7.—*Effect on Contracts of Violation of Revenue Statutes.*

Effect of intention of legislature.

1226. In considering the effect on the validity of a contract of failure to comply with a revenue statute, regard must be had to the intention of the legislature in making the statute. If the object of the statute was the benefit of the revenue only, the contract is not voided by failure to comply with its provisions. If, on the other hand, the statute has in view the advancement of some matter of social or public interest, a contract entered into in contravention of its provisions cannot be sued upon (*k*).

(*g*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 25; Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 9; Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 74. The penalty for failing to put up a signboard is £20 (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 25).

(*h*) 8 Edw. 7, c. 16. As to these, see pp. 684 *et seq.*, *post.*

(*i*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 6; Beerhouse Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 64), s. 3; Inland Revenue Board Act, 1849 (12 & 13 Vict. c. 1), s. 16. Private brewer's licences are also granted by money order at post offices; see, further, title INTOXICATING LIQUORS, Vol. XVIII., pp. 17 *et seq.*

(*j*) Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 21 (2); and see title INTOXICATING LIQUORS, Vol. XVIII., p. 73.

(*k*) *Smith* v. *Mawhood* (1845), 14 M. & W. 452, *per* PARKE, B., at p. 463. Unlicensed trading.—In *Ritchie* v. *Smith* (1848), 6 C. B. 462, a contract entered into for the purpose of enabling a person to use a room to sell excisable liquors without a licence was held void. In *Palk* v. *Force* (1848), 12 Q. B. 666, an unlicensed appraiser could not recover for work and labour done on an appraisement made by him. Smuggling.—In the case of goods sold abroad and afterwards smuggled into this country, the vendor is not entitled to recover on the contract of sale in the courts of this country if he has given some active assistance in the carrying out of the illegal

SECT. 2.—*The Duties.*

SUB-SECT. 1.—*Beer* (*l*).

Beer duty.

1227. Beer duty is payable at the current rate (*m*) by a brewer of beer for sale (hereafter referred to as a "brewer for sale"), and in some cases by a brewer of beer not for sale (*n*) (hereafter referred to as a "brewer not for sale"), on the beer brewed or presumed to have been brewed by him.

Basis of charge.

1228. The charge for beer duty payable by a brewer for sale is raised either upon the quantity of the worts (*o*) actually produced in each brewing, or upon the quantity of the worts deemed to have been produced from the materials used in the brewing, whichever is the greater (*p*). Where a brewer not for sale is chargeable with beer duty, the charge for duty is always raised on the worts deemed to have been produced from the materials used (*q*).

Calculation of charge on worts.

1229. The charge on the worts actually produced is calculated on the quantity and gravity of the worts of each brewery as declared by the brewer in his entry in the official book (*r*) kept by him for the purpose, or as found by the excise officer who visits the brewery after

importation of the goods into England (*Clarke* v. *Shee* (1774), 2 Doug. (K. B.) 698, n.; *Clugas* v. *Penaluna* (1791), 4 Term Rep. 466; *Waymell* v. *Read* (1794), 5 Term Rep. 599). But where the delivery of the goods abroad is complete and no active assistance is given by the vendor in the work of smuggling, the price may be recovered (*Holman* v. *Johnson* (1775), Cowp. 341; *Pellecat* v. *Angell* (1835), 2 Cr. M. & R. 311); and see titles CONFLICT OF LAWS, Vol. VI., pp. 243, 244; CONTRACT, Vol. VII., pp. 390, 391, 401, 402.

(*l*) For definition of "beer" for the purposes of the charge of beer duty, see note (*g*), p. 630, *post*, and for definition of "beer," for the sale of which a licence must be held, see note (*b*), p. 650, *post*. As to customs duties on beer, see p. 594, *ante*. As to excise duties in relation to intoxicating liquors, see also title INTOXICATING LIQUORS, Vol. XVIII., pp. 17 *et seq.*

(*m*) The rate at present in force is 7*s.* 9*d.* for every barrel of 36 gallons, calculated at the standard gravity of 1,055 degrees, and so in proportion for any difference in quantity or gravity (Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 11; Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), s. 3; Finance Act, 1896 (59 & 60 Vict. c. 28), s. 8; Finance Act, 1900 (63 & 64 Vict. c. 7), s. 6).

(*n*) For the cases where beer duty is payable by a brewer not for sale, see p. 632, *post*.

(*o*) For the meaning of "worts," see note (*b*), p. 623, *post*.

(*p*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 13 (3); Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), s. 3 (1). Whether the charge is upon the actual produce or the deemed produce, a deduction from the gross quantity of 6 per cent. for waste is first allowed (Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 13 (3) (b)); compare the text, *infra* (as to materials charge). The Commissioners of Customs and Excise may cause the charge for duty to be made up at the close of each month in respect of all brewings during that month (Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 16).

(*q*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 13 (1); but subject to a deduction of 6 per cent. for waste (Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 15 (1)); compare the text, *infra* (as to materials charge).

(*r*) For the official book kept by a brewer for sale, and the entries to be made therein, see p. 631, *post*.

SECT. 2. The Duties.

the brewing is completed and the brewer's entry has been made, whichever gives the higher charge (*s*). The gravity entered by the brewer must in all cases be the true original gravity of the worts before fermentation (*t*). Where fermentation has not commenced, the original gravity is the gravity as shown by the saccharometer and tables approved by the Commissioners of Customs and Excise (*u*); where fermentation has commenced, the original gravity may be ascertained by distillation (*a*). If at any time after the worts of a brewery have been collected, and the account of them has been entered in the official book by the brewer, their original gravity is found to exceed by 5 degrees that entered by the brewer, such worts are deemed to be the produce of a fresh brewing, and the brewer is charged beer duty in respect of them accordingly (*b*).

Materials charge.

1230. A brewer of beer is deemed to have obtained 36 gallons of worts at the standard gravity (*c*) when he has used in brewing:—either 84 lbs. weight of malt or corn (other than rice, flashed maize, maize grits, and corn similarly prepared or dressed (*d*)); or 56 lbs. weight of sugar (*e*), or of rice, flaked maize, maize grits, or corn similarly prepared (*f*).

When duty levied on materials charge.

1231. Beer duty is only levied on the materials charge when this exceeds the worts charge by more than 4 per cent., and such levy is subject to a deduction, in the case of a brewer for sale, of 4 per cent. from the gross materials charge as well as to the further deduction of 6 per cent. for waste (*g*). In the case of a brewer not for sale, the only allowance made is that of 6 per cent. for waste (*h*).

(*s*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 13 (3). But this account is not conclusive in the event of collusion between the officer and the brewer (*A.-G.* v. *Brewster* (1795), 2 Anst. 560).

(*t*) Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 6.

(*u*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 14 (1). The approved saccharometer and tables must be such that a degree of gravity indicated on the instrument shall be equal to one-thousandth part of the gravity of distilled water at 60° Fahrenheit.

(*a*) *Ibid.*, s. 15, Sched. I.

(*b*) *Ibid.*, s. 24.

(*c*) *Ibid.*, ss. 12, 13.

(*d*) The Commissioners of Customs and Excise may determine when corn is so prepared or dressed as not to be properly classed with malt or corn for the purposes of the materials charge (Finance Act, 1896 (59 & 60 Vict. c. 28), s. 10). They may also, in the case of a brewer for sale, make such a deduction from the quantity of worts chargeable in respect of the materials as the special character of the materials seems to require (Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 13 (4)). This power has been exercised in the case of syrups, glucose, saccharum and dressed grain, which under the regulations are now deemed to produce one barrel of beer at the standard gravity for either 84 lbs. of liquid syrups of a density not exceeding 13 lbs. 2 oz. the gallon, or 68 lbs. of similar syrup of a density not exceeding 14 lbs. the gallon, or 64 lbs. of solid glucose, saccharum or dressed grain.

(*e*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 12.

(*f*) Finance Act, 1896 (59 & 60 Vict. c. 28), s. 10.

(*g*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 13 (3) (a), (b). As to the allowance for waste, see note (*q*), p. 613.

(*h*) Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 15 (1).

When duty is payable.

1232. The duty on beer brewed by a brewer for sale is due immediately the excise officer has taken his account of the worts produced in a brewing, but the Commissioners of Customs and Excise may allow the payment to be deferred to a date not later than the fifteenth day of the month succeeding that in which the duty was charged (*i*). Where duty is payable by a brewer not for sale, the Commissioners may fix the date at which it is to be paid (*k*).

Power of distress and sale.

1233. When any beer duty remains unpaid after the time within which it is payable, the collector of customs and excise for the district may issue his warrant authorising any person to distrain all beer and brewing materials, vessels and utensils in possession of the brewer, or of any person on his behalf or holding them in trust for him, and to sell them by public auction in satisfaction of the claim for duty (*l*).

Repayment of duty on loss of materials.

1234. Where any worts, beer, or materials in respect of which duty was paid are destroyed by fire or other unavoidable cause while on the brewery premises, the Commissioners of Customs and Excise are empowered to repay the duty on proof to their satisfaction of the loss (*m*).

Repayment on exports etc.

1235. Repayment of beer duty by way of drawback is allowed on all beer exported as merchandise abroad or to the Channel Islands or the Isle of Man, or shipped as ship's stores. The duty repayable is calculated at the rate in force at the time of shipment, and upon the quantity and original gravity of the beer actually shipped (*n*).

SUB-SECT. 2.—*Chicory.*

Nature of the charge.

1236. Chicory duty is the charge at the current rate paid by an authorised chicory dryer on the raw or kiln-dried chicory

(*i*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 16.

(*k*) *Ibid.*, s. 33 (2). In practice beer duty charged against a brewer not for sale is payable quarterly in January, April, July, and October.

(*l*) *Ibid.*, s. 17 (1). Six days' previous notice of the sale must be given, and the brewer is entitled at any time prior to the day fixed for the sale to redeem the whole or any part of the goods distrained upon by paying to the collector their true value (*ibid.*, s. 17 (3)). For the general power to distrain for duties in arrear, see Excise Management Act, 1841 (4 & 5 Vict. c. 20), s. 24. As to the general law of distress, see title DISTRESS, Vol. XI., pp. 115 *et seq.*

(*m*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 18. The Commissioners may also remit duty charged but not yet paid. Their decision as to whether the loss is due to some unavoidable cause is final, and not subject to review by the courts (*Macfarlane* v. *Inland Revenue Commissioners* (1859), 22 Dunl. (Ct. of Sess.) 266).

(*n*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 36 ; Finance Act, 1896 (59 & 60 Vict. c. 28), s. 9 ; Finance Act, 1900 (63 & 64 Vict. c. 7), s. 6. Where a certificate of landing is required, as in the case of beer exported to the Isle of Man, drawback is not payable until the certificate is produced (Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 39 (3)). Drawback is not payable in respect of beer exported, unless at the time the beer is shipped it is worth at least the duty of excise chargeable on it (Excise Drawback Act, 1817 (57 Geo. 3, c. 87), s. 10). Nor may drawback be paid after the expiration of two years from the date of shipment of the beer (Finance Act, 1895 (58 & 59 Vict. c. 16), s. 7). As to drawbacks generally, see pp. 697 *et seq.*, *post.*

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dried by him or received by him from another authorised dryer (*o*).

How charged.

1237. The duty is charged on the quantity delivered for home consumption from the dryer's warehouse, according to the account taken at the time of delivery by an officer of excise (*p*). The chicory of which account is taken may have been dried by any means and to any degree less than that at which it would be in a fit state to grind into powder (*q*).

Delivery account and payment of duty.

1238. An account of the quantities delivered from warehouse must be made up at the expiration of every six weeks or such other period as the Commissioners of Customs and Excise may fix. The duty is then payable on demand, and failure to pay in accordance with notice given to him subjects the dryer to a penalty of double the amount of the duty (*r*).

SUB-SECT. 3.—*Liquors supplied to Clubs.*

Rate of duty.

1239. A duty of 6*d.* per pound is levied on the amount of the purchases of intoxicating liquor supplied in or to a club, or on behalf of a club to its members (*s*).

How charged.

1240. The duty is charged on the statement, which the secretary of the club is required to make in the January of each year, of the purchases during the preceding calendar year (*t*).

(*o*) The rate at present in force is 12*s.* 1*d.* per cwt., and so in proportion for any greater or less quantity than 1 cwt. (Customs and Inland Revenue Act, 1872 (35 & 36 Vict. c. 20), s. 5). A licence need not be taken out by a dryer of chicory, but no one is allowed to dry chicory, or to have in his possession more than 14 lbs. of dried chicory, unless he has made entry of his premises and plant with the proper officer of excise, and provided on the premises a secure warehouse to be approved by the Commissioners of Customs and Excise (Excise Act, 1860 (23 & 24 Vict. c. 113), s. 8; Customs and Inland Revenue Act, 1882 (45 & 46 Vict. c. 41), s. 4). The business of a dryer of chicory and of a roaster of chicory or coffee cannot be carried on upon the same or communicating premises (Excise Act, 1860 (23 & 24 Vict. c. 113), s. 18). As to customs duties on chicory, see p. 595, *ante*.

(*p*) Excise Act, 1860 (23 & 24 Vict. c. 113), s. 15.

(*q*) *Ibid.*, s. 21.

(*r*) *Ibid.*, s. 15. The special official procedure established by the Excise Management Acts for securing the duties on excisable commodities applies also to chicory duty (Customs and Inland Revenue Act, 1872 (35 & 36 Vict. c. 20), s. 5). As to these, see p. 737, *post*. In practice the account is made up to the end of each calendar month in respect of the deliveries which took place within the month.

(*s*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 48. The charge is not limited to registered clubs, although the rules as to registration must in effect confine its levy to such clubs. The clerk who keeps the register of clubs is required to send notice to the Commissioners of Customs and Excise of the entry of any new club on his register and of any case of a club ceasing to be registered (*ibid.*, s. 48 (6)). As to clubs generally, see title CLUBS, Vol. IV., pp. 405 *et seq.*

(*t*) Finance (1900-10) Act, 1910 (10 Edw. 7, c. 8), s. 48 (1). The Commissioners may make regulations for assessing and charging the duty payable in the case of a club which is discontinued as a registered club during the year. By these the secretary is required to furnish the particulars within seven days of the discontinuance of the club (Stat. R. & O., 1910, p. 404).

The secretary must furnish the statement upon service on him of a notice in writing requiring him to do so (*a*). If no statement has been delivered by the 1st February in any year, the supply of intoxicating liquor in the club is to be treated, so long as the failure to furnish the statement continues, as a sale of intoxicating liquor without licence (*b*). Secretary's statement.

1241. If, by the 1st March in any year, the duty due remains unpaid, the collector of customs and excise may, after notice in writing has been served on the secretary requiring payment, issue his warrant authorising distraint to be made on the club premises for the duty due and unpaid (*c*). Power of distress in default of payment.

SUB-SECT. 4.—*Coffee Substitutes and Mixtures.*

1242. This duty is charged, according to the scale in force and the weight of the package, upon substances which are sold as substitutes for coffee or chicory, and upon all mixtures of coffee or chicory with one or more of such substances or with any other ingredient except chicory or coffee (*d*). How the duty is charged.

1243. The substance or mixture must be made up in packets of prescribed weight and labelled (*e*). Packets and labels.

(*a*) The secretary is liable to a fine not exceeding £20, recoverable summarily, if he fails to furnish the statement as required, and, in the case of a second or subsequent offence, to imprisonment with or without hard labour for a term not exceeding one month or to a fine not exceeding £50, or to both; and if he knowingly delivers an untrue statement, he is liable, on summary conviction, to imprisonment with or without hard labour for a term not exceeding three months, or to a fine not exceeding £50, or to both (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 48 (2); Stat. R. & O., 1910, p. 404). As to procedure before courts of summary jurisdiction, see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.* The notice requiring the statement may be sent by post addressed to the club (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 48). In case of a change of secretary between the date when the notice requiring the statement was served and the 31st January, the secretary in office on the latter date would be the person liable (*Booth* v. *Weightman* (1904), 91 L. T. 532).

(*b*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 48 (4). As to unlicensed sales of intoxicating liquors, see title INTOXICATING LIQUORS, Vol. XVIII., pp. 107 *et seq.*, 113 *et seq.*

(*c*) The proceeds of the distress must be sold by public auction after six days' previous notice has been given of the sale. Any surplus remaining after the discharge of the claim for duty and the costs and expenses of the distress and sale must be handed over to the secretary for the benefit of the club (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 48 (3)).

(*d*) Customs and Inland Revenue Act, 1882 (45 & 46 Vict. c. 41), ss. 5, 6. The rate now in force is $\frac{1}{2}d.$ for every $\frac{1}{4}$ lb. of the substitute or mixture. The duty is not charged upon mixtures of pure coffee with pure chicory. Compliance with the Act requiring the payment of the duty is no answer to a charge under the Acts relating to the adulteration of food (*ibid.*, s. 6 (4)). As to the adulteration of coffee and chicory, see title FOOD AND DRUGS, Vol. XV., p. 63. As to the customs duties on coffee and chicory, see pp. 595, 596, *ante*.

(*e*) Customs and Inland Revenue Act, 1882 (45 & 46 Vict. c. 41), s. 6 (1). Labels denoting the duty are issued by the Commissioners of Customs and Excise in sheets containing either halfpenny or penny labels. No one is allowed to have in his possession labels which have already been used (*ibid.* s. 7.); and see, further, title FOOD AND DRUGS, Vol. XV.,

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The label must be affixed to the packet before or at the time the substance is sold, exposed, or made up for sale, or is delivered out of the custody of the person making or importing the substance (*f*).

SUB-SECT. 5.—*Glucose.*

Nature of the duty.

1244. Glucose duty is the charge at the current rate (*g*) payable by a licensed manufacturer of glucose upon the glucose actually made or deemed to have been made by him.

How charged.

1245. The Commissioners of Customs and Excise may determine whether the duty shall be charged on the final product or on the quantity of glucose deemed by them to be capable of being obtained from the saccharine solution collected during the process of manufacture in a fixed and secured receiver (*h*). They are also authorised to apply to the payment and recovery of the duty upon glucose the provisions of the Act, governing the payment and recovery of the duty upon beer (*i*).

Repayment and remission of duty.

1246. Repayment or remission of glucose duty may be granted in the case of an accidental destruction of glucose on the premises of a glucose manufacturer; and repayment of the duty may be made by way of drawback on glucose exported as merchandise or shipped as stores. Where goods other than beer, in the manufacture or preparation of which glucose has been used, are exported or shipped as stores, a drawback is allowed equal to the duty on the quantity of glucose used in the manufacture or preparation (*k*).

p. 63. The provisions of the Stamp Act, 1891 (54 & 55 Vict. c. 38), as to forgery of stamps are made applicable to excise labels (*ibid.*, s. 23); see p. 703, *post.*

(*f*) Customs and Inland Revenue Act, 1882 (45 & 46 Vict. c. 41), s. 6.

(*g*) The rates of duty at present in force are :—

		s.	*d.*
Solid glucose	the cwt.	1	2
Liquid „	„	0	10

(Finance Act, 1908 (8 Edw. 7, c. 16), s. 2, Sched., 2).

(*h*) Finance Act, 1901 (1 Edw. 7, c. 7), s. 9, applying the Acts relating to the excise duty on beer (as to which see pp. 613 *et seq.*, *ante*). The Commissioners by regulations have provided that the duty is to be charged on the quantity of saccharine solution in the receiver by relation to gravity as ascertained by an approved saccharometer and tables, one degree of gravity thus found being taken to be equal to one thousandth part of the gravity of distilled water at 60° Fahrenheit. The quantity thus determined is subject to a deduction of 10 per cent. for waste in the subsequent stages of manufacture.

(*i*) Finance Act, 1901 (1 Edw. 7, c. 7), s. 9. Under this power the Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), ss. 16—18, 26—30, and 37—39, have been made to apply to the duty on glucose; see p. 615, *ante.*

(*k*) Finance Act, 1901 (1 Edw. 7, c. 7), s. 7. The Treasury must be satisfied as to the quantity of glucose claimed to have been used. As to drawbacks in general, see pp. 697 *et seq.*, *post.* The following scale of drawback has been adopted for caramels made from British-made glucose :—

		s.	*d.*
(1) Solid caramel, black, made from solid glucose . .	the cwt.	1	9
(2) Solid caramel, brown or amber, made from solid glucose	„	1	6
(3) Solid caramel, black, brown or amber, from liquid or from mixtures of liquid and solid	„	1	1

1247. Medicine label duty is charged at an *ad valorem* rate (*m*) on every inclosure containing certain drugs, or other preparations usually termed "proprietary medicines" (*n*).

When duty is chargeable.

1248. The duty is chargeable whenever any person makes, prepares, exposes for sale, or sells such a medicine, and in doing so either has or claims to have any secret or art in making or preparing it, or any exclusive right to make or prepare it, or if it is or has been made or sold under the authority of a patent, or if, by means of some document, it is held out as a specific for the prevention, cure, or relief of any human ailment (*o*).

By whom payable.

The duty is payable by the maker or first vendor before the preparation is sold, exposed for sale, or delivered out of his possession (*p*).

Label to be affixed.

The label must be so affixed to the inclosure that the packet cannot be opened, or the contents extracted, without rendering the label unfit for further use (*q*).

Exempted articles.

1249. The following articles are exempt from this duty :—

(1) Medicinal drugs vended entire by a surgeon, chemist

	s.	d.	
(4) Liquid caramel from solid glucose, and of not less specific gravity than 1,350 degrees . . .	the cwt.	1	5
(5) Liquid caramel made from liquid glucose, or from liquid and solid glucose, and of not less gravity than 1,350 degrees	,,	1	0

(*l*) This, which had previously been a stamp duty, was made a duty of excise as from the 1st April, 1909 (Finance Act, 1908 (8 Edw. 7, c. 16), s. 4); and see Excise Transfer Order, 1910 (Stat. R. & O., 1909, p. 239), r. 2.

(*m*) The rates in force are as follows, the value in each case being apart from the duty on the label :—

						£	s.	d.
Value of 1*s.*						0	0	1½
	s.	d.		s.	d.			
Exceeding	1	0	but not exceeding	2	6	0	0	3
,,	2	6	,,	4	0	0	0	6
,,	4	0	,,	10	0	0	1	0
,,	10	0	,,	20	0	0	2	0
,,	20	0	,,	30	0	0	3	0
,,	30	0	,,	50	0	0	10	0
,,	50	0				1	0	0

(Stamp Act, 1804 (44 Geo. 3, c. 98), Sched. B). The duty is not chargeable where the medicine is sold in bulk (Medicines Stamp Act, 1802 (42 Geo. 3, c. 56), s. 3). Nor would duty appear to be chargeable in the case of an inhalation; and see, further, title MEDICINE AND PHARMACY, Vol. XX., pp. 379, 380.

(*n*) For a full enumeration and description of proprietary medicines, see title MEDICINE AND PHARMACY, Vol. XX., pp. 377, 378.

(*o*) Medicines Stamp Act, 1812 (52 Geo. 3, c. 150), s. 2. A toilet soap may be recommended as beneficial for use in certain ailments without liability to duty arising (*Fincher* v. *Duclercq* (1896), 60 J. P. 276).

(*p*) Medicines Stamp Act, 1802 (42 Geo. 3, c. 56), s. 3. It is immaterial whether the medicine is sold wholesale or retail.

(*q*) Medicines Stamp Act, 1812 (52 Geo. 3, c. 150), s. 2. As to the provision of labels, see title MEDICINE AND PHARMACY, Vol. XX., p. 380. For penalties in connection with the fraudulent removal or use of labels, see *ibid.*, pp. 380, 381. Any person who sells unlabelled, or not properly labelled, an article liable to label duty, incurs a penalty of £10 (Medicines Stamp Act, 1812 (52 Geo. 3, c. 150), s. 2).

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or druggist, or a person holding an excise patent medicine licence (*r*);

(2) Known admitted and approved remedies sold by a duly qualified surgeon, chemist or druggist, where the label contains an adequate indication of the ingredients, or the medicine is prepared in accordance with a formula in the British Pharmacopœia or other recognised book of reference, and this is stated on the label (*s*);

(3) Ginger and peppermint lozenges and other articles of confectionery, unless sold as medicines (*t*);

(4) Artificial mineral waters containing effervescing ingredients, and the compositions from which these waters are made (*u*).

SUB-SECT. 7.—*Motor Spirit.*

Nature of the charge.

1250. Motor spirit duty is a charge at the current rate (*v*) payable by every licensed manufacturer of motor spirit upon any inflammable hydrocarbon or mixture containing a hydrocarbon which in the opinion of the Commissioners of Customs and Excise (*a*) is capable of providing reasonably efficient motive power for a motor car.

Time and manner of charge.

1251. The Commissioners may make regulations as to the time and manner in which motor spirit duty shall be charged and recovered; and they may for this purpose apply any of the provisions of the law in force for securing the duty on saccharine and on spirits (*b*).

Exemptions and remissions.

1252. Duty is not chargeable on motor spirit used for other purposes than supplying motive power to motor cars (*c*). Half the

(*r*) Medicines Stamp Act, 1812 (52 Geo. 3, c. 150); see p. 660, *post*. This exemption does not extend to tinctures (*Smith* v. *Mason & Co.*, [1894] 2 Q. B. 363).

(*s*) Medicines Stamp Act, 1812 (52 Geo. 3, c. 150), s. 2, Sched.; *Farmer* v. *Glyn-Jones*, [1903] 2 K. B. 6; but see, further, title MEDICINE AND PHARMACY, Vol. XX., p. 379, note (*h*). The two preceding exemptions (see the text, *supra*) do not in terms apply to limited companies; but in practice they are extended to companies holding patent medicine licences.

(*t*) Stamp Act, 1815 (55 Geo. 3, c. 184), s. 54. The recommendation for use as a medicine beneficial for the cure of some human ailment need not be affixed to or delivered with the medicine (*Smith* v. *Mason & Co.*, *supra*); nor need it be direct (*Ransom* v. *Sanguinetti* (1903), 67 J. P. 219). An article of food may be a medicine (*Harding* v. *Migge*, (1909), 101 L. T. 459).

(*u*) Stat. (1833) 3 & 4 Will. 4, c. 97, s. 20 (now repealed); *A.-G.* v. *Lamplough* (1878), 3 Ex. D. 214, C. A.

(*v*) The rate at present in force is 3*d*. per gallon (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 84 (1)). As to the customs duty on motor spirit, see p. 597, *ante*.

(*a*) Finance (1909–10) Act, 1910 (10 Edw. 7, c. 8), s. 84 (7). The Commissioners may prescribe tests to determine whether any liquid is dutiable motor spirit (*ibid.*).

(*b*) *Ibid.*, s. 84 (6); and see pp. 622 *et seq.*, *post*. The account for duty is raised against the manufacturer on the quantity of motor spirit collected in an approved fixed and gauged vessel into which all motor spirit produced by distillation must run direct from the still. The manufacturer is required to declare this quantity in an official book kept on the premises. The duty when charged may, if unpaid, be recovered by summary distress on an official warrant, as in the case of spirit duty payable by a distiller (Stat. R. & O., 1910, p. 679). As to such recovery by distress, see p. 625, *post*.

(*c*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 85 (1).

amount of duty only is chargeable on the spirit used by properly inscribed trade carts used in the course of trade or husbandry (*d*), by hackney carriages engaged in standing or plying for hire (*e*), by duly inscribed motor cars used partly as trade carts and partly as hackney carriages, or by a motor car kept by a duly qualified medical practitioner and used by him for the purposes of his profession (*f*). Where duty-paid spirit has been used for a purpose entitling to exemption or allowance in respect of the duty, the person who used the spirit is entitled to repayment in whole or in part of the duty which has been paid (*g*).

Penalty for non-payment of duty.

1253. If any maker of motor spirit fails to pay within the prescribed time and prescribed manner the duty with which he is charged, he incurs a fine of £20 and forfeits double the duty (*h*).

SUB-SECT. 8.—*Playing Cards.*

Nature of charge.

1254. The duty on playing cards is charged at the current rate (*i*) upon each pack of fifty-two cards made fit for sale and use in the United Kingdom.

Packing and wrappers.

The cards, before being sent out by the maker, must be made up in packs and inclosed in stamped wrappers, to which an excise label is securely affixed, indicating the duty (*j*).

Exemptions from wrappers.

Any person may sell second-hand cards without wrappers to a licensed maker of cards (*k*).

Toy cards not exceeding $1\frac{3}{4}$ inches in length and $1\frac{1}{4}$ inches in width may be sold without wrappers (*k*).

Penalty for selling cards not in packs nor in wrappers.

1255. Any maker of cards who sends out or delivers from his premises, except for exportation, any cards not in packs and enclosed in stamped wrappers incurs a penalty of £100 (*l*).

(*d*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 85 (1). The motor trade cart would, it is submitted, be such as to be entitled to exemption from carriage licence duty under the Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4 (3). As to the conditions under which a vehicle is exempt from carriage licence duty, see pp. 689 *et seq.*, *post.*

(*e*) A carriage may be plying for hire even where no charge is made for the journey (*R.* v. *Fletcher, Ex parte Ansonia* (1908), 98 L. T. 749). As to hackney carriages, and motor traffic generally, see title STREET AND AERIAL TRAFFIC.

(*f*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. V., Part I.

(*g*) *Ibid.*, s. 85 (3). The quantity on which repayment is claimed must be more than 5 gallons, and must have been used within the previous six months.

(*h*) Stat. R. & O., 1910, p. 679, r. 20, applying the Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 47. As to recovery of penalties, see pp. 737 *et seq.*, *post.*

(*i*) The rate at present in force is 3*d.* per pack (Revenue Act, 1862 (25 & 26 Vict. c. 22), Sched. C).

(*j*) *Ibid.*, s. 29; and see *ibid.*, s. 28. The duty is not chargeable on cards sent out for exportation; and loose cards not made up in packs may be sent out for that purpose (*ibid.*, ss. 32, 37).

(*k*) *Ibid.*, s. 36. The maker who purchases is required before selling to inclose them in stamped wrappers. Club cards may be sold by the committee to a member of a members' club without being in stamped wrappers, as the transaction is not a sale within the meaning of the Act (*Graff* v. *Evans*) 1882), 8 Q. B. D. 373).

(*l*) Revenue Act 1862 (25 & 26 Vict. c. 22), s. 32.

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SUB-SECT. 9.—*Railway Passenger Fares.*

Nature of charge.

1256. Railway duty is a percentage charged upon all fares exceeding 1*d.* a mile paid by passengers upon railways other than light railways (*m*).

Fares not chargeable.

Fares are deemed not to exceed 1*d.* a mile if they do not exceed 1*d.* for a journey of a distance less than a mile, and, if the distance, being more than a mile, is any number of complete half-miles and a fraction not less than a quarter-mile, they do not exceed ½*d.* for the half and ½*d.* for the fraction. If an Act allows special charges upon any part of a railway, that part is for the purposes of the duty regarded as a separate railway (*n*).

SUB-SECT. 10.—*Saccharine.*

Nature of charge.

1257. Saccharine duty is a duty at the current rate charged upon saccharine and substances of a like nature or use made by a licensed manufacturer of saccharine (*o*).

Regulations as to duty.

The Commissioners of Customs and Excise may make regulations for the payment, recovery, remission, and repayment of the duty on saccharine, and, for this purpose, apply any of the enactments relating to the duty on beer (*p*).

Any manufacturer of saccharine who fails to comply with the

(*m*) Railway Passenger Duty Act, 1842 (5 & 6 Vict. c. 79), Sched.; Cheap Trains Act, 1883 (46 & 47 Vict. c. 34), s. 2; Light Railways Act, 1896 (59 & 60 Vict. c. 48), s. 12 (2). The rates at present in force are 5 per cent. on fares other than urban traffic, and 2 per cent. in the case of fares exceeding 1*d.* a mile between stations certified by the Board of Trade as within the same urban district. But, if proper third-class accommodation and workmen's trains are not provided, the Commissioners of Customs and Excise may charge 5 per cent. on urban fares (Cheap Trains Act, 1883 (46 & 47 Vict. c. 34), s. 3). Railway passenger duty is not payable in respect of the carriage of royal forces under a duly signed route or order; see title RAILWAYS AND CANALS, Vol. XXIII., pp. 639, 699. As to the accounts of passenger fares to be rendered to the Commissioners (now the Commissioners of Customs and Excise), see Railway Passenger Duty Act, 1842 (5 & 6 Vict. c. 79), s. 4; Cheap Trains Act, 1883 (46 & 47 Vict. c. 34), s. 7; title RAILWAYS AND CANALS, Vol. XXIII., p. 640. In practice these accounts are sent in within ten days of the second month succeeding that in which the charge arose. A lessee of a railway is in the position of a proprietor, and must furnish accounts (Cheap Trains Act, 1883 (46 & 47 Vict. c. 34), s. 8).

(*n*) *Ibid.*, s. 4. In every case the total amount paid by the passenger for accommodation is that on which duty is charged (*A.-G.* v. *London and North Western Rail. Co.* (1881), 6 Q. B. D. 216, C. A.; and see *A.-G.* v. *Furness Railway*, [1899] 2 Q. B. 267.

(*o*) The rate at present in force is 7*d.* per ounce (Finance Act, 1908 (8 Edw. 7, c. 16), s. 2, Sched.). It is submitted that the duty becomes chargeable at the stage in the manufacturing process when the sulphonamide is oxidised, if not earlier; see *McNicol* v. *Pinch*, [1906] 2 K. B. 352. As to customs duty on saccharine, see note (*u*), p. 599, *ante*.

(*p*) Finance Act, 1901 (1 Edw. 7, c. 7), s. 9; Revenue Act, 1903 (3 Edw. 7, c. 46), s. 2. Duty is paid on the delivery for home consumption of saccharine from the bonded warehouse on the maker's premises, the charge being raised on the net quantity warehoused. The Commissioners have, by statutory order, provided for the repayment or remission of the duty on saccharine accidentally destroyed while on the maker's premises, under the same conditions as beer duty may be repaid or remitted (Stat. R. & O., 1904, p. 133, rr. 14, 15); and see p. 615, *ante*.

regulations of the Commissioners incurs a penalty of £50 and forfeiture of the saccharine in respect of which the offence is committed (*q*).

Repayment.

1258. Repayment by way of drawback is allowed of the duty paid on saccharine and substances of a like nature or use when exported as merchandise, shipped as stores, or removed to the Isle of Man (*r*).

SUB-SECT. 11.—*Spirits.*

Nature of charge.

1259. Spirit duty is a charge at the current rate (*s*) upon every gallon computed at proof (*t*) of spirits made in the United Kingdom by a licensed distiller (*a*).

How levied.

1260. It is levied at the distillery according to that one of the three following modes of charge which produces the greatest amount:—

Attenuation charge.

(1) The attenuation charge is a presumptive charge based upon the quantity of spirits which it is considered will be distilled from the wort or wash (*b*) prepared and fit for distillation. For this purpose every 100 gallons of wort or wash is deemed to yield 1 gallon of spirits at proof for every 5 degrees by which the gravity (*c*) of the liquor has been decreased during the course of the fermentation which it has undergone to render it fit for distillation (*d*).

Low wines charge.

(2) The low wines charge is raised on the intermediate product in the course of distillation, which is known as low wines and collected in a special vessel pending its redistillation into finished

(*q*) Finance Act, 1901 (1 Edw. 7, c. 7), s. 8.

(*r*) Finance Act, 1908 (8 Edw. 7, c. 16), s. 2; Finance Act, 1901 (1 Edw. 7, c. 7), s. 7. As to drawbacks, see pp. 697 *et seq.*, *post.*

(*s*) The rate at present in force is 14*s.* 9*d.* per proof gallon (Excise on Spirits Act, 1860 (23 & 24 Vict. c. 129), s. 1; Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8), s. 6; Finance Act, 1900 (63 & 64 Vict. c. 7), s. 6; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 81 (3)).

(*t*) "Proof" means the strength of proof as ascertained by Sykes's hydrometer, in accordance with the table of the strength of spirits lodged with the Commissioners, or by any means described in regulations published by the Commissioners of Customs and Excise (Spirits (Strength Ascertainment) Act, 1818 (58 Geo. 3, c. 28), ss. 2, 3; Spirits Act, 1880 (43 & 44 Vict. c. 24), ss. 3, 134; Finance Act, 1907 (7 Edw. 7, c. 13), s. 4). Proof spirits are spirits which at 51° Fahrenheit weigh $\frac{12}{13}$ parts of an equal bulk of distilled water (Spirits (Strength Ascertainment) Act, 1818 (58 Geo. 3, c. 28)); and see *Newby* v. *Sims*, [1894] 1 Q. B. 478, *per* DAY, J., at p. 481. As to the customs duties on spirits, see pp. 599 *et seq.*, *ante.*

(*a*) See p. 637, *post.*

(*b*) "Wort" or "wash" is the saccharine solution in which alcohol is formed by the process of fermentation. It may be made from any material whatever, provided that when made its gravity can be ascertained by the prescribed saccharometer (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 21; and see p. 639, *post*).

(*c*) A degree of gravity is taken as the one-thousandth part of the gravity of distilled water at 60° Fahrenheit (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 37 (1)).

(*d*) *Ibid.*, s. 46 (2). Under normal circumstances this charge is considerably less than that from spirits and feints, and is therefore seldom that on which the duty is levied.

SECT. 2. The Duties.

spirits (*e*). The charge is the quantity of spirits at proof contained in the low wines less a deduction of 5 per cent. (*f*).

Spirits charge.

(3) The spirits charge is calculated on the quantity of spirits at proof strength in the spirits and feints (*g*) collected in the spirits and feints receivers (*h*).

Payment of duty.

1261. Duty is payable at the time and in the manner prescribed in regulations made by the Commissioners of Customs and Excise (*i*). Where the conditions laid down in the regulations are complied with, payment may be deferred, or may be remitted altogether.

Deferred.

Payment is deferred when the spirits are deposited in a duty-free bonded warehouse, the duty being payable only on their delivery from the warehouse for home consumption (*k*).

Remitted.

The duty is remitted altogether on spirits delivered for exportation as merchandise (*l*); for ship's stores (*m*); for methylation (*n*); for use in arts and manufactures (*o*); or for use in fortifying wine in a duty-free warehouse (*p*).

Penalty for non-payment.

1262. If a distiller does not within the prescribed time and in the prescribed manner pay the duty charged on the spirits made

(*e*) Spirits Act, 1880 (43 & 44 Vict. 24), s. 3.

(*f*) *Ibid.*, s. 46 (3). The strength of the liquor is ascertained by the hydrometer in the ordinary way. The deduction is on account of anticipated loss on redistillation. It is not practicable to raise the charge from low wines where continuous distillation is followed. Purified methylic alcohol is deemed to be low wines and chargeable with duty as such, and the person purifying methylic alcohol is regarded as a distiller (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 133 (1)).

(*g*) "Feints" are the impure portions of the distillate which are separated from the pure spirit and collected apart in the "feints receivers."

(*h*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 46 (4). Every distiller is required to provide both a spirit receiver and a feints receiver at his distillery; see note (*e*), p. 638, *post*. As to offences against excise regulations as to spirits, see also title INTOXICATING LIQUORS, Vol. XVIII., pp. 146 *et seq.*

(*i*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 47; see regulations in Stat. R. & O., 1906, p. 161, Part I. Except where payment is postponed or the duty is remitted as set out in the text, *infra*, it is to be paid on the delivery of the spirits from the store at the distillery, and this must take place at the latest within ten days of the close of the distilling period within which the spirits were distilled (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 43 (8)).

(*k*) *Ibid.*, s. 76. Duty is then charged on the quantity actually delivered, if the Commissioners are satisfied that any loss which took place in the spirits while in warehouse was not due to fraud. The rate of duty is that chargeable at the date of the actual removal of the spirits from warehouse (Finance Act, 1900 (63 & 64 Vict. c. 7), s. 9).

(*l*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 81 (1).

(*m*) *Ibid.*, s. 82.

(*n*) *Ibid.*, s. 83; and see pp. 639 *et seq.*, *post*.

(*o*) Finance Act, 1902 (2 Edw. 7, c. 7), s. 8. In the case of spirits sent for exportation, shipment as stores, methylation, or use in arts or manufactures, bond is required to be given to secure payment of the duty should the spirits not be disposed of in the manner authorised.

(*p*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 95, as applied by the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 18, and amended by the Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 5. Where spirits lodged in a Crown warehouse are destroyed by fire or by the falling of the warehouse, the duty payable in respect of them is remitted (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 55).

at his distillery he incurs a fine of £20 and forfeits double the amount of the duty payable (*q*).

Power of distress and sale.

1263. If spirit duty payable by a distiller is in arrear, the collector of customs and excise may issue a warrant empowering any person to distrain all the spirits, malt or other materials for distilling, and all vessels and utensils belonging to the distiller and all spirits warehoused in his name, and sell the effects thus seized in payment of the duty and costs (*r*).

Repayment: (1) on spirits rectified;

1264. On their deposit in a duty-free warehouse, repayment of spirit duty, at the rate then in force, is made to a licensed rectifier or compounder (*s*) on all British compounded spirits (*t*) and spirits of wine (*u*) rectified or compounded by him from spirits upon which the duty has been paid (*a*).

(2) exports;

1265. Repayment of the duty is also allowed on tinctures (*b*) and spirits of wine exported or shipped as stores direct from the premises of a licensed rectifier or compounder, the duty being calculated in this case on the quantity actually exported, together with such an addition in respect of spirits lost in manufacture as the Commissioners of Customs and Excise think just (*c*).

(3) waste.

1266. Repayment or remission may be allowed of any duty payable in respect of spirits or wash accidentally lost or destroyed at a distillery, or spirits accidentally lost or destroyed on removal into or out of a distillery, store or bonded warehouse, or under bond to be put on board ship for exportation or use as ships' stores (*d*).

(*q*) Spirits Act, 1880 (43 & 44 Vict. c, 24), s. 47.

(*r*) *Ibid.*, s. 48. Sale is to be by public auction, of which six days' previous notice must be given. The distiller may, previous to the sale, redeem all or any of the goods distrained on, paying to the collector their true value. As to offences against excise regulations as to spirits, see also title INTOXICATING LIQUORS, Vol. XVIII., pp. 146 *et seq.*

(*s*) See p. 641, *post.*

(*t*) That is, spirits, whether British or foreign, redistilled or which have had any flavour communicated thereto, or ingredient or material mixed therewith (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 3).

(*u*) Spirits of wine are rectified spirits of the strength of not less than 43 degrees above proof (*ibid.*).

(*a*) *Ibid.*, s. 95. British compounds of a strength exceeding 11 degrees over proof, sweetened British compounds (including liqueurs) of any strength, and spirits of wine can be warehoused on drawback for exportation or ship's stores only (*ibid.*, s. 95 (2)). As to drawbacks, see pp. 697 *et seq.*, *post.*

(*b*) "Tinctures" include medicinal spirits, flavouring essences, perfumed spirits, and any other articles containing spirits and specified in regulations made by the Commissioners of Customs and Excise (Revenue Act, 1906 (6 Edw. 7, c. 20), s. 4 (1)).

(*c*) *Ibid.*, s. 3. In the case of tinctures an addition of 3 per cent. is made to the quantity actually exported or shipped; but no addition is made in the case of spirits of wine (Stat. R. & O., 1906, p. 168, r. 7).

(*d*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 115. The Commissioners of Customs and Excise must be satisfied as to the loss or destruction, and their decision on the matter cannot be reviewed on an action to compel repayment of the duty (*Macfarlane* v. *Inland Revenue Commissioners* (1859), 22 Dunl. (Ct. of Sess.) 266; see *Leakey and Haig* v. *Dunglinsor* (1891), 65 L. T. 152).

SECT. 2. SUB-SECT. 12.—*Tobacco (Home Grown).*

The Duties.

Nature of charge.

1267. Tobacco duty is a charge at the current rate (*e*), payable upon all tobacco grown in the United Kingdom by a person holding a licence to grow, cultivate, or cure tobacco.

Regulations as to duty and cultivation of tobacco.

1268. The Commissioners of Customs and Excise may make regulations for securing and collecting the duty, and for prohibiting the growth, cultivation, or curing of tobacco, except by a person duly licensed (*f*) and upon premises of which entry has been made and on land approved by them; and for this purpose to apply the provisions of the Manufactured Tobacco Act, 1863 (*g*), or any amending Act (*h*).

How duty is charged.

1269. The tobacco leaf is first weighed for charge as soon as it is in a condition to be weighed, and not later than the 1st January following the cutting or gathering, and again as soon as it is sufficiently cured to be fit for use by a manufacturer. When the second and final weighing takes place for assessment of the duty, if the difference between the weight found on the first and that found on the final weighing is not such as to be accountable by legitimate loss during the curing process, the Commissioners may assess the duty upon the weight found on the first weighing, less such a deduction on account of loss in curing as they think proper (*i*).

Penalties for breach of regulations and unlawful removal.

1270. Any person licensed to grow, cultivate, or cure tobacco who infringes any of the regulations made by the Commissioners is liable to a penalty of £50; and if any person is found removing tobacco grown in the United Kingdom exceeding 3 lbs. in weight without having an official permit or certificate authorising its

(*e*) The rates at present in force are:—

		£	*s.*	*d.*
Upon unmanufactured tobacco containing 10 per cent. or more of moisture .	the lb.	0	3	6
„ „ tobacco containing less than 10 per cent of moisture .	„	0	3	11
Upon manufactured Cavendish or negrohead made in bond .	„	0	4	8

(Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. IV., Part II.). As to the customs duties on tobacco, see pp. 607 *et seq.*, *ante*.

(*f*) See p. 644, *post*. The Commissioners may refuse to grant a licence in certain cases.

(*g*) 26 & 27 Vict. c. 7; see pp. 644 *et seq.*, *post*.

(*h*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 83 (4), extending to England and Scotland the provisions of the Finance Act, 1908 (8 Edw. 7, c. 16), s. 3 (2), (3), which applied to Ireland only. Under the regulations of the Commissioners, the duty is assessed on the tobacco when it is in a fit state for use by a manufacturer, and it must be paid on removal of the tobacco for home consumption to a manufacturer's premises. The tobacco may, however, be removed under bond, duty free for exportation, or to an approved duty-free warehouse, and, in the latter case, payment of the duty is deferred until the delivery from the warehouse for home consumption (Stat. R. & O., 1911, p. 427, r. 16).

(*i*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 83; Stat. R. & O., 1911, p. 427, rr. 8, 16.

removal, he may be arrested by any officer of customs and excise, and is liable to a fine of £100 (*j*).

Drawback.

1271. Drawback of the duty on home-grown tobacco is allowed at the same rates and subject to the same conditions as drawback is allowed of the customs duty on imported tobacco (*k*).

Tobacco for agricultural purposes.

1272. No duty is payable upon tobacco grown subject to the regulations of the Commissioners of Customs and Excise for the sole purpose of being used in the manufacture of insecticides or sheepwash, or for other purely agricultural or horticultural purposes (*l*).

Part VII.—Excise Licences.

SECT. 1.—*In General.*

SUB-SECT. 1.—*What a Licence Covers.*

Licence covers only one set of premises.

1273. Except in the case of appraisers, auctioneers, and hawkers, every excise licence granted in respect of any trade or manufacture authorises the carrying on of such trade or manufacture at one set of premises only, which must be specified in the licence (*m*). One licence may be granted for the same person to carry on more than one trade on the same premises, provided that the licences, if granted separately, would by law expire on the same date (*n*).

Exception in case of partnership.

Where two or more persons carry on any trade or business in partnership, except the trade of an appraiser, auctioneer, or hawker, they need not in any year take out more than one licence for each set of premises in which the trade or business is carried on (*o*).

SUB-SECT. 2.—*Form of Licence.*

Form.

1274. The form of an excise licence is in the discretion of the Commissioners, except in so far as it is expressly fixed by the statute imposing it (*p*).

SUB-SECT. 3.—*Commencement of Licence.*

Commencement.

1275. A licence dates and has effect as from the hour and minute on which it is granted, and does not relate back to the earliest moment

(*j*) Finance Act, 1908 (8 Edw. 7, c. 16), s. 3; Stat. R. & O., 1911, p. 427, r. 28, applying the Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 145.

(*k*) See p. 607, *ante*, and p. 645, *post*; and see Stat. R. & O., 1911, p. 427, r. 26. As to drawbacks generally, see pp. 697 *et seq.*, *post*.

(*l*) Finance Act, 1912 (2 & 3 Geo. 5, c. 8), s. 4.

(*m*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), ss. 7, 10; Revenue Act, 1863 (26 & 27 Vict. c. 33), s. 15; Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 15 (3); Revenue Act, 1884 (47 & 48 Vict. c. 62), s. 12 (4); Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8), s. 9; Finance Act, 1897 (60 & 61 Vict. c. 24), s. 6 (1). This applies also to a railway restaurant car licence; see p. 666, *post*.

(*n*) Revenue Act, 1863 (26 & 27 Vict. c. 33), s. 15.

(*o*) Appraisers Licences Act, 1806 (46 Geo. 3, c. 43), s. 5; Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 7; Beerhouse Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 64), s. 10; Hawkers Act, 1888 (51 & 52 Vict. c. 33), s. 5.

(*p*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), ss. 6, 7; Inland Revenue

SECT. 1. In General.

of the day of its date; but where a licence is granted to any person by way of renewal of a licence held by him in the previous year, such licence, if paid at the time and place prescribed for payment, bears date on, and relates back to, the day following the day of expiration of the former licence (*q*).

SUB-SECT. 4.—*Transferability of Licence.*

On death or removal.

1276. Where the holder of an excise licence in respect of any premises dies or removes from the premises, the licence may be transferred by indorsement to his executor, administrator, widow or child, or to his assignee (as the case may be), in occupation of the premises; and if the licensed premises are destroyed by fire or other unavoidable cause the person licensed may have the licence transferred to other premises (*r*).

Licences depending on justices' licences.

If the excise licence is one for the holding of which a justices' licence is necessary (*s*), a transfer made without the authority of a justices' licence is void (*t*). Such a licence also becomes void if for any reason the justices' licence on which it is granted is forfeited or becomes void (*u*).

SUB-SECT. 5.—*Irregularity in Form.*

Irregularity.

1277. A licence obtained irregularly but in good faith is valid, provided that a valid licence might have been obtained by compliance with the forms (*a*).

Licence obtained by fraud.

A licence is not void though obtained by fraud where the licensee was no party to the fraud (*b*).

Board Act, 1849 (12 & 13 Vict. c. 1), s. 16; Still Licences Act, 1847 (9 & 10 Vict. c. 90), s. 3; Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27), s. 10; Hawkers Act, 1888 (51 & 52 Vict. c. 33), s. 3 (2); Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 49 (1). Where the statute has fixed the date at which a licence is to expire, a licence granted without the insertion of the date of expiration is valid and will expire on the statutory date (*M'Isaac* v. *Lang* (1864), 3 Macph. (Ct. of Sess.) 189); and see Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21). The forms of local taxation licences at present in use are to continue until the Treasury prescribes some other (Stat. R. & O., 1908, p. 470, clause II.).

(*q*) *Campbell* v. *Strangeways* (1877), 37 L. T. 672; 42 J. P. 39; Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 16; and, for the special provision as regards refreshment house licences, see p. 667, *post*.

(*r*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), ss. 11, 21; Beerhouse Act, 1840 (3 & 4 Vict. c. 61), s. 8; Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27), s. 12; Revenue Act, 1862 (25 & 26 Vict. c. 22), s. 15. If the licence has been granted in the name of the deceased since his death, this cannot be transferred, being "a mere nullity" (*Cowles* v. *Gale* (1871), 7 Ch. App. 12). A man may go out of his licensed premises without abandoning his licence (*Lawrence* v. *O'Hara* (1903), 67 J. P. 369). As it is permissive with the excise authorities to make the transfer, they are accustomed to attach conditions to the transfer in certain cases.

(*s*) See title INTOXICATING LIQUORS, Vol. XVIII., pp. 16, 17, 21 *et seq.*

(*t*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), ss. 11, 13, 21.

(*u*) *Ibid.*, s. 22; Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 106.

(*a*) *Stevens* v. *Emson* (1876), 1 Ex. D. 100; *Pearson* v. *Broadbent* (1872), 36 J. P. 485.

(*b*) *R.* v. *Minshull* (1833), 1 Nev. & M. (K. B.) 277.

SUB-SECT. 6.—*Repayment of Licence Duty.*

1278. Where the justices' licence on which an excise licence has been granted expires before the end of the term of the excise licence, otherwise than because of a conviction of the licensee, and it is not renewed, the licensee is entitled to repayment of a proportionate part of the licence duty on the unexpired licence (*c*). On expiration of justices' licence during term.

SUB-SECT. 7.—*Offence against Terms of Licence.*

1279. Where a person holding an excise licence for the sale of any goods deals in or sells the goods otherwise than he is authorised by his licence to do, and no specific penalty is imposed by any Excise Act for the contravention of the terms of the licence, he is liable to the excise penalty incurred for dealing in or selling the goods without a licence, or to an excise penalty of £50 (*d*). Irregular sale.

Where anyone is charged with trading without a licence it is not necessary to give evidence negativing the existence of a licence (*e*). Burden of proof.

SUB-SECT. 8.—*Taking Orders for Excisable Goods.*

1280. If any person, not being a *bonâ fide* traveller taking orders on behalf of a duly licensed employer, solicits, takes, or receives orders for goods for the dealing in or selling of which an excise licence is required, he must hold the appropriate licence for dealing in or selling such goods. But this does not apply in the case of foreign goods imported and lodged in a duty-free warehouse, provided that the quantity sold at any one time is, in the case of wine or spirits, not less than 100 gallons, and, in the case of any other goods, not less than an entire package as imported (*f*). When licence necessary.

(*c*) Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 7. The repayment is of such sum as bears to the full amount of the duty the same proportion as the unexpired period of the licence bears to the whole year (*ibid.*). In the case of all payments by, or repayments to, any person in respect of the duty on a licence, fractions of a penny are disregarded (Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 22). As to repayment of duties generally, see p. 611, *ante*.

(*d*) Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 24; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 50 (4). Any person holding an excise licence must, within a reasonable time after demand, produce and deliver it to be read and examined by any officer of customs and excise (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 28).

(*e*) *R.* v. *Turner* (1816), 5 M. & S. 206; *R.* v. *Hanson* (1821), Paley on Summary Convictions, 2nd ed., 45.

(*f*) Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 17; and see, further, title INTOXICATING LIQUORS, Vol. XVIII., p. 115. It is a question of fact in any particular case whether a person is or is not a *bonâ fide* traveller (*Stuchbery* v. *Spencer* (1886), 55 L. J. (M. C.) 141). But if the substantial occupation of a person is not that of travelling and journeying from town to town soliciting orders he is not entitled to the exemption (*Killick* v. *Graham, Lintern* v. *Burchell*, [1896] 2 Q. B. 196; *Hepple* v. *Brumby* (1896), 60 J. P. 792; *Scott & Co.* v. *Solomon*, [1905] 1 K. B. 577). The offence of unlawfully soliciting, taking, or receiving may be committed through an agent, and at an unlicensed shop in the same town in which the person holds a licence (*Elias* v. *Dunlop*, [1906] 1 K. B. 266). A drayman taking orders and then going out and delivering the goods is not a traveller (*Stansfeld & Co., Ltd.* v. *Andrews* (1909), 100 L. T. 529). For the exemption allowed to manufacturers, see pp. 631, 635, 639, *post*.

SECT. 2. Licences to Manufacture.

SECT. 2.—*Licences to Manufacture.*

SUB-SECT. 1.—*Brewers of Beer for Sale.*

Definition.

1281. Any person who brews beer (*g*) for the use of any other person at any place other than the premises of the person for whose use the beer is brewed, and any person licensed to deal in, or retail, beer, who brews beer, is deemed a brewer for sale, and must take out an annual licence (*h*), the rate of duty upon which depends on the quantity of beer brewed by him during the preceding year (*i*).

Licence and duty.

Licences.

1282. Licences are granted by the Commissioners of Customs and Excise, who may refuse to grant a licence in any case in which in their opinion, having regard to the situation of the proposed brewery with respect to a distillery, it would be inexpedient to allow the brewing of beer to be carried on (*k*).

Entry and brewing book.

1283. A brewer for sale must, before he begins to brew, deposit with the local officer of customs and excise a written entry (*l*) or description of the places, vessels and utensils to be used by him in his business, and stating the purpose for which each is to be used (*m*). He must also keep on the brewery premises and accessible to the excise officials an official book in which to give notice from

(*g*) "Beer" includes ale, porter, spruce beer, black beer, and any other description of beer, and any liquor which is made or sold as a description of beer or as a substitute for beer, and which on an analysis of a sample thereof is found to contain more than 2 per cent. of proof spirit (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 52). A liquor is a description of beer when sold as beer with any epithet describing it (*Howarth* v. *Minns* (1886), 51 J. P. 7). And where a liquor was made from liquid glucose and hops and was fermented with yeast, had the ordinary gravity of beer, and was sold as a beer, it was held to be beer, although it contained only 2 per cent. of proof spirit (*Fairhurst* v. *Price*, [1912] 1 K. B. 404). For definition of "proof spirit," see note (*e*), p. 600, *ante*.

(*h*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 19.

(*i*) *Ibid.*, s. 10; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 51, Sched. I., A. The scale for licence duty is:—

	£	s.	d.
Not exceeding 100 barrels brewed	1	0	0
Exceeding 100 barrels—			
For the first 100 barrels	1	0	0
For every further 50 barrels or fraction of 50 barrels	0	12	0

In calculating the duty the barrels taken may, at the option of the brewer, be either the bulk barrels or the barrels brewed at the standard original gravity of 1,055 degrees (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., A., scale 2). If the brewer neglects or refuses to exercise the option, it is the practice to charge the duty by the method which gives the lowest charge. The year taken is the year ending the 30th June, or such other day as the Commissioners of Customs and Excise may fix (*ibid.*, provision 4).

(*k*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 12.

(*l*) The mode in which this entry is to be drawn up is prescribed by statute; see Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), ss. 20, 21; Excise Management Act, 1834 (4 & 5 Will. 4, c. 51), s. 5; Excise Management Act, 1841 (4 & 5 Vict. c. 20), s. 7; Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 15; and see p. 610, *ante*.

(*m*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 22 (1). An officer of customs and excise may at any hour of the day or night go upon the

time to time of his intention to brew and of the quantity and kind of the materials to be used in the brewing (*n*).

Charge of duty.

1284. A brewer must follow the customary order of brewing in making beer, must collect the whole produce of each brewing separately in the vessels set apart for the purpose, and immediately the collection is completed the brewer must enter an account in the official book of the quantity and gravity of the beer (*o*). Beer duty at the rate for the time being in force is payable not later than the fifteenth day of the following month on the quantity thus produced in each month (*p*).

Penalty for brewing without licence.

1285. Any person who brews beer for sale without having taken out the necessary licence is liable in respect of each offence to an excise penalty of £500 (*q*).

Possession of noxious substances.

1286. A brewer of beer for sale is not allowed to use in brewing or to have in his possession any substance or liquor which, in the opinion of the Treasury, is of a noxious or detrimental nature, or which, being a chemical or artificial product, would, if used, prejudicially affect the interests of the revenue (*r*).

Sales authorised by licence.

1287. The licence granted to a brewer for sale authorises the sale of beer in wholesale quantities (*s*) at the brewery premises where the beer is brewed, and elsewhere in like quantities by the brewer

premises and take account of any beer or brewing materials found there (Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), ss. 29, 30); and see, further, title INTOXICATING LIQUORS, Vol. XVIII., p. 145.

(*n*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 20.

(*o*) *Ibid.*, ss. 20 (5), 23 (2).

(*p*) *Ibid.*, s. 16. The present rate is 7*s.* 9*d.* per barrel, and is chargeable on the barrels of beer brewed calculated at the standard original gravity of 1,055 degrees (Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), s. 3; Finance Act, 1900 (63 & 64 Vict. c. 7), s. 4). The gravity can be ascertained either by the use of a saccharometer approved by the Commissioners of Customs and Excise or by the process of distillation and use of the tables in the statutory schedule (Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), ss. 14, 15; Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 6). A degree of gravity is taken as the one-thousandth part of the gravity of distilled water at 60° Fahrenheit. As to the recovery of the duty, see p. 615, *ante*; and as to the recovery of excise duties and penalties generally, see pp. 737 *et seq.*, *post*.

(*q*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 50 (1). For further offences by brewers for sale, see title INTOXICATING LIQUORS, Vol. XVIII., pp. 144, 145.

(*r*) Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 5. Power is given to the Treasury, by notice in the *London Gazette*, to prohibit the use and possession by brewers for sale of any substances. Brewers are now prohibited from keeping or using saccharin, sucramine, sugarol, or the compounds of these substances respectively, or any substance which, being a chemical or artificial product, furnishes the chemical tests of saccharin. The use of any material which contains arsenic is also forbidden. The penalty for the use of a prohibited article is £50 and forfeiture of the beer in which it was used; the penalty for having a prohibited article in possession is forfeiture of the article (*London Gazette* of 18th May, 1888, p. 2832). As to the adulteration of beer generally, see title FOOD AND DRUGS, Vol. XV., p. 45.

(*s*) That is, not less than 4½ gallons or two dozen reputed quart bottles (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., A, scale 2, Provisions applicable to Manufacturers' Licences, 1; B, Provisions applicable to Retailers' Licences, 1 (b), 2).

†

SECT. 2. Licences to Manufacture.

or his servant or agent, provided that the beer is supplied to the purchaser direct from the brewery where it is brewed (*t*).

SUB-SECT. 2.—*Brewers of Beer Not for Sale.*

Definition.

1288. A brewer of beer not for sale is a person who brews beer for his own domestic use or for use by farm labourers employed by him in the actual course of their employment (*u*). He can brew only at a house (*v*) occupied by him or, in case the house he occupies is of an annual value not exceeding £10, at a house gratuitously lent to him by another brewer not for sale (*a*).

Brewing in house under £8 value.

If he occupies a house of an annual value not exceeding £8, he may brew beer, but only for his own domestic use, without taking out a licence to brew and without being liable to pay beer duty on the beer brewed (*b*). If he brews also for the use of his farm labourers he must take out an annual licence at 4*s*., but is exempt from beer duty (*c*).

House under £10 value.

If he occupies a house of an annual value exceeding £8, but not exceeding £10, he must take out a 4*s*. licence, but he may brew beer for domestic use and for his farm labourers without payment of beer duty (*d*).

House under £15 value.

If he occupies a house of an annual value exceeding £10 and not exceeding £15 and brews beer solely for his own domestic use, he must take out a licence at the 9*s*. rate, but is exempt from beer duty on the beer (*e*). If he brews for any other than his own domestic use, he must pay beer duty on the beer and take out a licence at 4*s*. (*f*).

House over £15.

In the case of a brewer not for sale who occupies a house of an annual value exceeding £15, beer duty must in all circumstances be paid on the beer brewed and a 4*s*. licence taken out (*f*).

(*t*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., A, scale 2, Provisions applicable to Manufacturers' Licences, 1.

(*u*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 34 (1), (2); and see, further, title INTOXICATING LIQUORS, Vol. XVIII., p. 146.

(*v*) "House" includes a dwelling-house together with the offices, courts, yards, and gardens occupied therewith (Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 15 (4)).

(*a*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 34 (2).

(*b*) Customs and Inland Revenue Act, 1886 (49 & 50 Vict. c. 18), s. 3; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I. (2).

(*c*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 34 (1); Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., A, scale 2, provision 2.

(*d*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 33 (3), 34 (1); Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., A, scale 2, provision 2.

(*e*) Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 15 (2); Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., A, scale 2, provision 2.

(*f*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 33; Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 15; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., A, scale 2, provision 2. The annual value of the house is to be ascertained by such means as the Commissioners of Customs and Excise think fit, subject to a right of appeal to the Commissioners of Income Tax (see title INCOME TAX, Vol. XVI., p. 613) for the district in which the house is situate. Exemption from beer duty is not necessarily fixed by the annual value of the house in which the beer is brewed. If the brewer occupies a house of an annual value which

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1289. A licence, whenever taken out, can be granted only on payment of the full year's licence duty, and expires on the 30th September next following the date on which it is issued (*g*). — Licence.

1290. Any person who brews beer not for sale for the brewing of which an excise licence is required without having taken out the necessary licence is liable in respect of each brewing to an excise penalty of £500 (*h*). — Penalty for brewing without licence.

1291. Where a brewer of beer not for sale is liable to pay beer duty, he is required on each occasion before commencing to brew to enter in an official paper, with which he is served by the local officer of customs and excise, particulars of the kind and quantity of the materials to be used by him in the brewing, and to produce this paper at any time on demand by the officer (*i*). — Brewing paper.

1292. Any beer duty chargeable is payable at such times as the Commissioners of Customs and Excise appoint (*j*). — Any beer duty.

SUB-SECT. 3.—*Makers of Playing Cards.*

1293. A maker who is also a seller of playing cards (*k*) is required to take out a licence, which, whenever granted, is obtainable only on payment of the full yearly duty and expires on the 1st September next following (*l*). — Necessity for and duration of licence.

1294. A maker of cards who sells or offers for sale any cards without having in force the necessary licence is liable to a penalty of £20 (*m*). — Penalty for selling without licence.

SUB-SECT. 4.—*Makers of Glucose and Invert Sugar.*

1295. Every person who makes glucose or invert sugar is required to take out annually a licence at the current rate for the — Nature of licence.

disentitles him to exemption, he is liable to pay beer duty on beer brewed by him in another house the annual value of which would be such as to exempt the occupier from payment of beer duty (*Tippett* v. *Hart* (1883), 10 Q. B. D. 483).

(*g*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 49 (2).

(*h*) *Ibid.*, s. 50 (1).

(*i*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 32. The charge for beer duty is calculated on the beer which the brewer is presumed to have obtained from the materials used as shown in the paper, less a deduction of 6 per cent. from the quantity (Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 15). For the method of ascertaining this presumed quantity, see p. 614, *ante*. An officer of customs and excise may at all reasonable times enter and inspect the premises of a brewer not for sale and examine the brewing vessels and utensils (Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 35); and see, further, title INTOXICATING LIQUORS, Vol. XVIII., p. 146.

(*j*) Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 33 (2). As to the recovery of beer duty, see p. 615, *ante*.

(*k*) The term "cards" means playing cards chargeable with stamp duty (Revenue Act, 1862 (25 & 26 Vict. c. 22), s. 28). As to this duty, see p. 621, *ante*. The duty has been transferred from stamp to excise revenue by the Finance Act, 1908 (8 Edw. 7, c. 16), s. 4; see Excise Transfer Order, 1909 (Stat. R. & O., 1909, p. 239), r. 2.

(*l*) The rate at present in force is £1 (Revenue Act, 1862 (25 & 26 Vict. c. 22), Sched. C; Revenue (No. 2) Act, 1864 (27 & 28 Vict. c. 56), s. 6).

(*m*) Revenue Act, 1862 (25 & 26 Vict. c. 22), s. 31. As to the excise duty on playing cards, see p. 621, *ante*.

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premises used by him in his business (*n*). The licence, whenever taken out, is obtainable only on payment of the duty for the full year, and expires on a date to be fixed by the Commissioners of Customs and Excise (*o*). A licence to make glucose authorises the manufacture of invert sugar on the same premises (*p*).

Entry of premises.

1296. A glucose maker is required to make entry of his manufacturing premises with the local officer of customs and excise and to comply with the regulations made by the Commissioners for securing the duty chargeable on the glucose made by him (*q*).

Penalty for breach of regulations.

If any maker of glucose or invert sugar fails to comply with any of the regulations he is liable to an excise penalty of £50, and the article in respect of which the defence was committed is forfeited (*r*).

SUB-SECT. 5.—*Makers of Medicine.*

Who must be licensed.

1297. Every maker of medicine which is chargeable with medicine label duty (*s*) must take out a licence; but this does not apply to a victualler, confectioner, or other shopkeeper who sells, for consumption in his shop, medicines which are artificial or other waters (*t*).

Nature of licence.

1298. The licence, whenever taken out, is granted only on payment of the full duty for the year and expires on the 1st September following (*u*).

A licensed maker of medicine may without further licence sell patent medicines, whether of his own manufacture or not (*v*).

Penalty for selling without licence.

1299. Every person who makes patent medicines liable to patent medicine label duty without having in force the necessary licence incurs a penalty of £20 (*w*).

(*n*) The rate at present in force is £1 (Finance Act, 1901 (1 Edw. 7, c. 7), s. 5).

(*o*) *Ibid.*, s. 9. The licence expires on the 30th June in each year.

(*p*) There is no duty chargeable on invert sugar.

(*q*) Finance Act, 1901 (1 Edw. 7, c. 7), s. 9. For "entry," see p. 610, *ante*; and, as to glucose duty, see p. 618, *ante*.

(*r*) Finance Act, 1901 (1 Edw. 7, c. 7), s. 9.

(*s*) See p. 619, *ante*.

(*t*) Stamp Act, 1804 (44 Geo. 3, c. 98), Sched. A; Customs and Inland Revenue Act, 1875 (38 & 39 Vict. c. 23), s. 8; Medicines Stamp Act, 1812 (52 Geo. 3, c. 150), s. 4. The term "medicine" means any drugs, herbs, pills, waters, essences, tinctures, powders, or other preparations or compositions used or applied or to be used or applied externally or internally for the prevention, cure, or relief of any disorder or complaint affecting the human body (Stamp Act, 1804 (44 Geo. 3, c. 98), Sched. A; *A.-G.* v. *Lamplough* (1878), 3 Ex. D. 214, C. A.). All artificial mineral waters, and all waters impregnated with soda or mineral alkali, or with carbonic acid gas, and all compositions in a liquid or solid state which are to be used for the purpose of making such waters, are not "medicines" (*A.-G.* v. *Lamplough*, *supra*, explaining stat. 1833 (3 & 4 Will. 4, c. 97), s. 20); and see title MEDICINE AND PHARMACY, Vol. XX., pp. 378, note (*b*), 379.

(*u*) Medicines Stamp Act, 1802 (42 Geo. 3, c. 56), s. 8. The rate at present in force is 5*s*. (Customs and Inland Revenue Act, 1875 (38 & 39 Vict. c. 23), s. 8).

(*v*) Customs and Inland Revenue Act, 1875 (38 & 39 Vict. c. 23), s. 8.

(*w*) Medicines Stamp Act, 1802 (42 Geo. 3, c. 56), s. 9.

SUB-SECT. 6.—*Makers of Motor Spirit.*

SECT. 2. Licences to Manufacture.

Who must take out licence.

1300. Every manufacturer (*a*) of motor spirit is required to take out annually a licence in respect of the premises in which he carries on the business of a manufacturer. The premises must have been approved by the Commissioners of Customs and Excise and entry made of them with the proper officer of excise before a licence can be obtained (*b*).

Nature of licence.

1301. The licence, whenever taken out, can be granted only on payment of the full duty for the year (*c*), and expires on the 31st May next following the date of issue. It covers the keeping and using of any still which is used solely for the manufacture of motor spirit (*d*).

Manufacture

1302. The Commissioners of Customs and Excise may apply to the manufacture of motor spirit the provisions of the Acts governing the manufacture of saccharin (*e*) and any of the provisions of the Acts (*f*) regulating the manufacture of plain British spirits (*g*).

Sale.

1303. A manufacturer of motor spirit may sell and send out in any quantities that may be desired motor spirit of his own

(*a*) Including a refiner of motor spirit and a person otherwise preparing motor spirit (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 84 (7)). For definition of "motor spirit" see note (*m*), p. 597, *ante*. As to the excise duties on motor spirit, see p. 620, *ante*.

(*b*) Stat. R. & O., 1910, p. 679, regulations 3, 4.

(*c*) The rate of duty at present in force is £1 (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 84 (2)).

(*d*) *Ibid.*, s. 84 (3).

(*e*) Finance Act, 1901 (1 Edw. 7, c. 7), ss. 8, 9; Revenue Act, 1903 (3 Edw. 7, c. 46), s. 2; and see p. 620, *ante*.

(*f*) Spirits Act, 1880 (43 & 44 Vict. c. 24); Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 14; Revenue Act, 1903 (3 Edw. 7, c. 46), s. 3; and see pp. 637 *et seq.*, *post*.

(*g*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 84 (6). In pursuance of the powers thus given, the Commissioners require that a person licensed to manufacture motor spirit shall comply with the following conditions:— (1) give bond that all motor spirit prepared shall be produced for charge and that none shall be used upon or removed from the premises until the duty has been paid or the use or removal has been officially sanctioned: (2) provide such receivers or other receptacles as may be required for collecting, keeping, or storing motor spirit, residues, and materials used in the manufacture of the spirit.: (3) enter in the prescribed form in the official entry book supplied to him particulars of all still charges and of the distillates and residues produced: (4) run the distillates direct from the still to the receivers, and there retain them separate for at least three hours, unless an account has previously been taken of them by the surveying officer: (5) keep motor spirit upon which duty has not been charged at all times separate and apart from spirit upon which duty has been charged: (6) keep a stock-book, which shall be accessible to the surveying officer and in which shall be entered daily the particulars of all spirits manufactured, received or delivered (the stock-book must be made up at least once a month and an account of the spirits in stock then taken): (7) furnish to the officer a periodical return specifying (i.) the quantity of the spirits manufactured or received, (ii.) the quantity delivered (a) at the full duty, or (b) at the half-duty (see p. 620, *ante*), or (c) duty free: (8) give to any purchaser of 2 gallons or upwards of motor spirit on which full duty has been paid a certificate to that effect in the form prescribed (Stat. R. & O. 1910, p. 679).

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manufacture on which duty has been paid; but he may only deliver spirit on which the full duty has not been paid to either (1) a manufacturer, in quantities of not less than 100 gallons; or (2) an authorised dealer or user, in quantities of not less than 8 gallons, and upon receipt by him in either case of the prescribed form of requisition. All spirit sent out must be accompanied by a certificate in the prescribed official form (*h*).

Sales by vanmen.

1304. A manufacturer may also through his vanmen sell and deliver motor spirit at the premises of a licensed dealer (*i*).

Penalty for manufacturing without licence.

1305. Any person who manufactures motor spirit without having in force the licence prescribed by regulations of the Commissioners of Customs and Excise is liable to a penalty of £50 (*j*).

SUB-SECT. 7.—*Makers of Saccharine.*

Nature of licence.

1306. Every person who manufactures (*k*) saccharine, including substances of a like nature or use (*l*), is required to take out an annual licence at the current rate for the premises used by him in his business. The licence, whenever taken out, is granted only on payment of the full year's duty and expires on a date to be fixed by the Commissioners of Customs and Excise (*m*).

Entry of premises and general regulation.

1307. The premises which are to be licensed must have been approved by the Commissioners and must be entered with the local officer of customs and excise (*n*). The Commissioners may further apply any of the Acts relating to the excise duty and drawback on beer, and to brewers of beer, to the duty on saccharine and to manufacturers of saccharine (*o*).

(*h*) Stat. R. & O., 1910, p. 679, rr. 14, 19. As to motor spirit dealers, see pp. 661, 662, *post*.

(*i*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 84 (6); Stat. R. & O., 1910, p. 679, r. 15. The sale would, but for this provision, be an offence against the Hawkers Act, 1888 (51 & 52 Vict. c. 33), s. 2 (*O'Dea* v. *Crowhurst* (1899), 80 L. T. 491; and see title MARKETS AND FAIRS, Vol. XX., pp. 55, 56). The vanman must, on demand by any officer of customs and excise, declare his name and address, and the name of his employer and the address of the licensed refinery (Stat. R. & O., 1910, p. 679, r. 15).

(*j*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 84 (6), applying the Finance Act, 1901 (1 Edw. 7, c. 7), s. 8.

(*k*) The production of ortho from a mixture of ortho and para saccharine is not a process for which a licence to manufacture saccharine is required (*McNicol* v. *Pinch*, [1906] 2 K. B. 352).

(*l*) These are substances, such as sucramine and sugarol, which answer the chemical tests of saccharine.

(*m*) The rate at present in force is £1, and the date of expiration has been fixed as the 30th June (Stat. R. & O., 1904, p. 133, Part I., r. 2).

(*n*) Finance Act, 1901 (1 Edw. 7, c. 7), ss. 8, 9 (Stat. R. & O., 1904, p. 133, Part I., r. 1; Part II., r. 1).

(*o*) Finance Act, 1901 (1 Edw. 7, c. 7), s. 9; Revenue Act, 1903 (3 Edw. 7, c. 46), s. 2; and see pp. 622 *et seq.*, *ante*. Before approval is obtained the manufacturer is required to provide (1) a secure compartment within which the final processes of manufacture can be carried on; (2) a secure bonded warehouse within which the saccharine manufactured may be stored prior to duty being paid on it; and (3) necessary accommodation for the officials who have to attend to charge the duty (Stat. R. & O., 1904, p. 133, rr. 3, 4, 5).

SECT. 2. Licences to Manufacture.

1308. Any person who manufactures saccharine without having in force the necessary licence is liable to a penalty of £50, and the saccharine in respect of which the offence is committed is forfeited (*p*).

Penalty for making without licence.

SUB-SECT. 8.—*Distillers of Spirits.*

1309. Every person who has or uses a still for distilling spirits (*q*), or who makes wort or wash (*r*), or who makes or keeps wort or wash prepared and fit for distillation, and has in his possession or use a still, must take out an annual licence at the current rate as a distiller (*s*).

Distillers who must be licensed.

1310. Where the largest still to be kept by a distiller is of less capacity than 400 gallons, a licence cannot be granted unless the applicant produces to the Commissioners of Customs and Excise a certificate of three justices that he is a fit person to have a licence, and that the premises proposed to be licensed are in his actual possession and of a yearly value of at least £10 (*t*).

Conditions attachable to licence.

No person is entitled to a licence for a distillery unless the proposed premises are situate in or within a quarter of a mile of a market town (*u*).

The Commissioners may refuse to grant a licence to a distiller unless he provides a secure spirit store to their satisfaction (*a*). They may also refuse where, having regard to the proximity of the proposed distillery to a rectifying house, brewery,

(*p*) Finance Act, 1901 (1 Edw. 7, c. 7), s. 8.

(*q*) "Spirits" includes all liquors mixed with spirits, provided that the ingredients so mixed are not such as to convert the compound into an article which is not known in the commercial world as "spirits" (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 3; *A.-G.* v. *Bailey* (1847), 1 Exch. 281; *Bailey* v. *Harris* (1849), 12 Q. B. 905).

(*r*) The wort or wash must have been made with the intention of extracting the alcohol formed in it by the use of a still; see p. 623, *ante*.

(*s*) Spirits Act, 1880 (43 & 44 Vict. c. 24), ss. 5 (1), 6; and see, further, title INTOXICATING LIQUORS, Vol. XVIII., pp. 146, 147. The rate depends on the numbers of gallons at proof distilled during the preceding year. Where this was less than 50,000 gallons, £10 is charged, and, for every further 25,000 or fraction of 25,000, an additional sum of £10 (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., A, scale 1). All distillers' licences expire on the 30th September in each year (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 49 (2)). Beginners may obtain a licence at a proportional part of the rate according to the period of the year in which the licence is taken out (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 17). The extraction of spirits absorbed in the wood of casks by the addition of water to the casks is not distillation, but "grogging," and is an offence (Finance Act, 1898 (61 & 62 Vict. c. 10), s. 4; *Lord Advocate* v. *Stewart* (1899), 63 J. P. 311; *Lord Advocate* v. *Carse* (1899), 63 J. P. 472).

(*t*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 8 (1). The Commissioners may refuse to grant the licence even where the certificate is produced (*ibid.*).

(*u*) *Ibid.*, s. 9 (1). But the Commissioners may grant a licence on the terms of the distiller providing and keeping convenient lodgings for the officers engaged in surveying the distillery. A licence granted on these terms may be suspended or revoked on failure of the distiller to fulfil the conditions imposed (*ibid.*, s. 9 (4)).

(*a*) *Ibid.*, s. 13. Power to suspend or revoke a licence for failure to keep the store properly secured exists also in this case (*ibid.*).

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or vinegar factory, they think it inexpedient that the distilling of spirits should be allowed (*b*).

Proximity to rectifier's premises.

1311. No person may use premises as a distillery (*c*) within a quarter of a mile from the premises of a rectifier or compounder of spirits (*d*).

Vessels.

1312. After a distiller has taken out a licence, and before commencing to distil, he must provide certain vessels which are necessary for the purpose of assessing the duty to be charged on the spirits made at his distillery (*e*).

Entry of places and vessels.

When the distillery premises and plant are completed, the distiller must make entry (*f*) with the local officer of excise of all the places, vessels, and utensils intended to be used by him in the course of his business as distiller. No vessel or place must be entered for use for more than one purpose, nor used for any other purpose than that for which it was entered (*g*).

Order of working.

1313. A distiller must follow the prescribed order of working at his distillery (*h*), and is required to give the officer in charge of the premises notice beforehand of all the brewing or distilling operations he intends to carry out (*i*).

(*b*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 11 (4). There is a corresponding power to refuse a licence to a brewer, vinegar maker, or rectifier for premises in undesirable proximity to a distillery (*ibid.*, ss. 12, 88 (4)); and compare title INTOXICATING LIQUORS, Vol. XVIII., p. 147.

(*c*) For further restrictions as to the use of the premises and prohibition against carrying on certain trades therein, see *ibid.*, s. 11 (1), (2); title INTOXICATING LIQUORS, Vol. XVIII., p. 147.

(*d*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 10 (1). This restriction only applies where the licensed rectifier or compounder keeps a still (*ibid.*). A retailer of spirits may not be interested in the business of a distiller carried on within two miles of the premises for which he holds his retailer's licence (*ibid.*, s. 101 (2)).

(*e*) *Ibid.*, s. 14, and Sched. I., Part I. These vessels, which must be kept while the distiller's licence continues in force, are prescribed according to the nature of the operations to be carried on. If the still to be used is of such a kind that the produce of the wash on the first distillation is feints (see note (*g*), p. 624, *ante*) and spirits, the vessels to be provided are one wash charger, one feints reciever, and one spirit reciever; while, if the produce of the first distillation is low wines, the distiller must provide in addition one low wines receiver and one low wines and feints charger (Spirits Act, 1880 (43 & 44 Vict. c. 24), Sched. I., Part I.). There is also a maximum fixed for the number of vessels which may be kept in any distillery; and the Commissioners have a discretionary power to allow the use of any vessels in addition to or substitution for those prescribed (*ibid.*, s. 16, and Sched. I., Part II.). For the penalty for unlawfully altering or removing such vessels, see title INTOXICATING LIQUORS, Vol. XVIII., p. 147.

(*f*) For excise entry, see p. 610, *ante*.

(*g*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 19 (1). In addition to the particulars required to be supplied in the entry of an excise trader, the distiller is required to state the distilling capacity or the content in gallons of every still to be used by him, and to furnish a model drawing of the plant and premises (*ibid.*, s. 19 (4)). An entry made by a distiller cannot be withdrawn while any of the utensils mentioned in it, or any spirits or other materials liable to duty, remain on the premises (*ibid.*, s. 20).

(*h*) *Ibid.*, ss. 25, 28, 32, 34, 38; Sched. I., Part II.

(*i*) *Ibid.*, ss. 26, 27, 38. As to distilling in unlawful hours, or with other than the distiller's own wort, see title INTOXICATING LIQUORS, Vol. XVIII., pp. 148, 149.

Accounts of working.

1314. A distiller must at the prescribed intervals render to the officer accounts (*k*) of all the wort and wash made, and of the spirits distilled, at the distillery (*l*), and he must at all times give the officer the necessary assistance in taking account of the spirits or other goods on the distillery premises (*m*).

Penalty for distilling without licence.

1315. Any person who, without being licensed to do so, keeps or uses a still for distilling spirits, or brews or makes wort or wash fit for distillation, or distils low wines or feints, is liable to a fine of £500 and forfeiture of all the vessels and materials used and spirits made by him (*n*).

Sales from distillery.

1316. A distiller may sell and send out from his distillery premises to any one person at one time not less than nine gallons in cask or five dozen quart or ten dozen pint bottles of the spirits made by him at that distillery (*o*).

Grogging.

1317. A distiller's licence does not authorise the holder to obtain spirits from casks by "grogging." Any person is liable to a fine of £50 (*p*) who subjects any cask to any process (*q*) for the purpose of extracting any spirits absorbed in the wood thereof or who has on his premises any cask which is being subjected to any such process, or any spirits extracted from the wood of any cask (*a*).

SUB-SECT. 9.—*Makers of Methylated Spirits.*

Who must be licensed.

1318. Every maker of methylated spirits (*b*), other than a licensed distiller (*c*) or rectifier duly authorised by the Commissioners of Customs and Excise to methylate, must take out a licence for the premises on which he carries on the business of a methylator (*d*).

(*k*) These are to be made up to the end of each distilling period, as to which see note (*i*), p. 624, *ante*.

(*l*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 39.

(*m*) *Ibid.*, ss. 135, 137, 138.

(*n*) *Ibid.*, s. 5. A penalty of £500 is also imposed by the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 50 (1).

(*o*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., A., scale 2, provision 1, incorporating the Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 106 (4).

(*p*) If more than one cask is grogged, cumulative penalties are incurred (*Lord Advocate* v. *Stewart* (1899), 63 J. P. 311).

(*q*) Some actual process must be applied for the purpose of extracting the spirits. If spirits exude from an empty cask kept on the premises, this does not constitute grogging (*Robinson Brothers* v. *Dixon*, [1903] 2 K. B. 701). But where water has been added to a cask for the purpose of keeping it sweet, and spirits are thereby extracted from the wood, this constitutes the offence (*Lord Advocate* v. *Carse* (1899), 63 J. P. 472).

(*a*) Finance Act, 1898 (61 & 62 Vict. c. 10), s. 4.

(*b*) The term "methylated spirits" means spirits mixed with any substance or combination of substances approved for the purpose of methylation by the Commissioners (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 123 (3); Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8), s. 32 (1)). The substance commonly used in methylation is approved wood naphtha of a strength not less than 60 degrees over proof. As to the duty on foreign spirits used in making methylated spirits, see p. 601, *ante*.

(*c*) A distiller authorised to make methylated spirits can employ spirits made at his own distillery only (Regulations of the Commissioners, made under the Spirits Act, 1880 (43 & 44 Vict. c. 24), ss. 118, 120).

(*d*) Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 27. A person holding a

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Grant of licence.

1319. A licence is granted only in respect of premises of which entry has been made by the methylator and which have been approved by the Commissioners of Customs and Excise (*e*), who are also empowered to suspend or revoke the licence (*f*). It may be obtained on payment of a proportional part of the yearly rate according to the quarter of the year in which it is granted, but, whenever issued, it expires on the 30th September next following (*g*).

Penalty for acting without licence.

1320. Any person who makes methylated spirits without being duly licensed or authorised to do so is liable to a penalty of £50 (*h*).

Classification of spirits.

1321. There are two kinds of methylated spirits—(1) industrial, which is intended for use in any art or manufacture within the United Kingdom, and in which the proportion of wood naphtha or other substance approved for the purpose of methylation is not less than one-nineteenth of the bulk of the spirits methylated (*i*); and (2) mineralised, in which the proportion of wood naphtha or other substance approved for methylation is not less than one-ninth of the bulk of the spirits methylated, and which in addition have mixed with them such quantity of mineral naphtha as may for the time being be prescribed by the Commissioners (*j*).

Regulations as to methylation.

1322. The spirits to be methylated are received duty free under bond from a warehouse or distillery, and must be either plain British or unsweetened foreign spirits (*k*) of a strength not less than 50 degrees over proof, or rum of not less strength than 20 degrees over proof (*l*).

licence as a maker may also, with the permission of the Commissioners, make methylated spirits in a duty-free warehouse (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 122; Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8), s. 34).

(*e*) Approval is not given unless a special room in which the mixing is to take place is provided, as well as a secure store-room for storing the naphtha or other substances approved for methylation, and a mixing vat capable of containing at least 550 gallons. Bond must also be given by all makers of methylated spirits for the due receipt and mixing of the spirits (Regulations dated 11th August, 1906 (Stat. R. & O. 1906, p. 161), made under the Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 123).

(*f*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 132.

(*g*) The rate at present in force is £10 10*s.* for the full year (Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 27).

(*h*) Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 27 (3).

(*i*) Revenue Act, 1906 (6 Edw. 7, c. 20), s. 4.

(*j*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 123; Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8), s. 32; Revenue Act, 1906 (6 Edw. 7, c. 20), s. 4. By the Regulations, dated 11th August, 1906, the quantity of mineral naphtha prescribed is to be not less than three-eighths of 1 per cent. by volume of the spirits to which it is added. Such mineral naphtha must be of a specific gravity not less than ·800, and must have been officially examined and approved before use.

(*k*) But, in the case of foreign spirits, the difference between the duty actually chargeable on them and the duty to which they would have been liable as plain British spirits must be paid before they are allowed to be methylated (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 123 (5)).

(*l*) *Ibid.*, s. 123 (1).

The quantity of British spirits which may be methylated at one time must not be less than 450 gallons. In the case of foreign spirits, the contents of the cask in which the spirits were imported may be used at one time in a methylation (*m*).

The methylation of spirits must be carried out in the time and mode laid down in regulations made by the Commissioners of Customs and Excise (*n*).

Stock accounts.

1323. Every methylator of spirits is required to keep a stock account in the prescribed form of all methylated spirits made or received by him, distinguishing between industrial and mineralised spirits (*o*). The two kinds of spirits must be kept and stored apart in vessels marked to indicate to which of the two classes the contents of each vessel belongs (*p*).

Delivery on exportation or sale.

1324. A maker of methylated spirits may send out the spirits for exportation in quantities not less than 10 gallons (*q*), or he may send out not less than 5 gallons (which may be in quart vessels) (*r*) on sale to a person who produces to him a requisition containing an official certificate that the person to whom the spirits are being sent is authorised by the Commissioners of Customs and Excise to receive the spirits applied for (*s*). Spirits sent out must in all cases be accompanied by a permit (*t*). If a maker supplies spirits to a person after he has been officially informed that such person is not authorised to receive them he must pay duty on the spirits sent out at the rate payable on British spirits (*u*).

Allowances.

1325. An allowance of 3*d.* per proof gallon is payable to a methylator on the quantity of dutiable spirits used by him in making industrial methylated spirits and on the quantity of dutiable spirits used by him in making mineralised methylated spirits exported (*a*).

SUB-SECT. 10.—*Rectifiers or Compounders of Spirits.*

Liability to take out licence.

1326. Every rectifier or compounder of spirits is required to take out a licence annually at the current rate (*b*) for the premises in which he carries on his business as rectifier or compounder.

(*m*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 123 (2).

(*n*) *Ibid.*, s. 123 (6). The methylation must be carried out throughout in the presence of a surveyor and an officer of customs and excise, who must see that the requisite quantity of naphtha or other approved substance is added to the spirits and thoroughly mixed therewith. An account is taken of the spirits before methylation and of the spirits resulting from the methylation, the latter being added to the official stock account kept of the spirits (Stat. R. & O. 1906, p. 161).

(*o*) Revenue Act, 1906 (6 Edw. 7, c. 20), s. 2 (4).

(*p*) *Ibid.*, s. 2 (3).

(*q*) Stat. R. & O., 1906, p. 161, made 11th August, 1906.

(*r*) Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8), s. 32 (2).

(*s*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 124 (1).

(*t*) *Ibid.*, s. 124 (2).

(*u*) *Ibid.*, s. 128 (2); and see p. 623, *ante*.

(*a*) Finance Act, 1895 (58 & 59 Vct. c. 16), s. 6; Finance Act, 1902 (2 Edw. 7, c. 7), s. 5 (1); Revenue Act, 1906 (6 Edw. 7, c. 20), s. 1 (1); and as to drawbacks and allowances, see pp. 697 *et seq.*, *post*.

(*b*) The rate at present in force is £15 15*s.* (Finance (1909-10) Act, 1910

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The licence, whenever taken out, expires on the 30th June in each year (*c*); but a beginner may obtain a licence upon payment of a proportionate part of the whole yearly rate (*d*).

The licence.

Any person committing the offence of unlicensed rectifying or compounding is liable to a penalty of £500 (*e*).

Penalty for rectifying without licence.

1327. The Commissioners of Customs and Excise may refuse to grant a licence for premises which they regard as in objectionable proximity to a licensed distillery (*f*).

Objectionable and prohibited premises.

A rectifier may not carry on his business upon premises situate within a quarter of a mile of a distillery (*g*).

Entry of premises.

1328. Entry (*h*) must be made with the local officer of excise of the premises and plant of a rectifier (*i*).

Stills.

The stills to be used must be of a prescribed pattern (*k*), must be fitted by the rectifier with appliances for securing revenue control of them (*l*).

Spirits in rectifier's premises.

1329. A rectifier is allowed to distil spirits only from duty-paid spirits, and he may not have upon his premises any other materials from which spirits or low wines may be extracted by distillation (*m*). A rectifier or compounder must not mix any British wine with any British spirits for any purpose whatsoever (*n*). All spirits received into a rectifier's stock are taken in subject to the supervision of the surveying officer (*o*), and no distillation of spirits may take place until the officer has examined the contents of the still (*p*).

Delivery from warehouse and export on drawback.

1330. A rectifier may sell and send out from his rectifying premises British compounds or spirits of wine in quantities of not

(10 Edw. 7, c. 8), Sched. I., A). A licence as rectifier or compounder must also be taken out by persons desirous of exporting tinctures on drawback (Revenue Act, 1906 (6 Edw. 7, c. 20), s. 3; Stat. R. & O., 1906, p. 168, r. 2).

(*c*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 49 (2).

(*d*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 17.

(*e*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 50 (1).

(*f*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 88 (4).

(*g*) *Ibid.*, s. 88 (1). For further restrictions as to the use of the premises and for prohibition against carrying on certain trades therein, see *ibid.*, s. 88 (1), (2); title INTOXICATING LIQUORS, Vol. XVIII., p. 147.

(*h*) For "entry," see p. 610, *ante*. The entry must, in addition to the usual particulars, give the number of gallons which each still, including the head, is capable of containing (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 86, applying to rectifiers *ibid.*, s. 19 (1) (c)). As to the capacity of the still, see, further, title INTOXICATING LIQUORS, Vol. XVIII., pp. 146, 147.

(*i*) Spirits Act, 1880 (43 & 44 Vict. c. 24), ss. 15, 86, Sched. I. As to penalty for unlawful alterations in entered vessels, see title INTOXICATING LIQUORS, Vol. XVIII., p. 147.

(*k*) Spirits Act, 1880 (43 & 44 Vict. c. 24), Sched. III. The Commissioners may allow the use of a still of unusual type (*ibid.*, s. 86 (b)).

(*l*) *Ibid.*, s. 86, and Sched. I.; and, as to prohibited times as regards use of still, see title INTOXICATING LIQUORS, Vol. XVIII., p. 149.

(*m*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 89. He is only allowed to receive foreign spirits for the purpose of rectifying or compounding them (*ibid.*, s. 89 (2) (c)); and see, further, title INTOXICATING LIQUORS, Vol. XVIII., p. 152.

(*n*) Regulations of the Commissioners, dated 8th March, 1912, made under the Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 10. As to the adulteration of spirits, see title FOOD AND DRUGS, Vol XV., p. 67.

(*o*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 90.

(*p*) *Ibid.*, Sched. III., Part II. The officer may also sample the contents of the still for analysis (*ibid.*, s. 92).

less than 2 gallons or not less than one dozen reputed quart bottles at any one time to one person (*q*). He may also warehouse on drawback, in any customs or excise duty-free warehouse, compounds or spirits of wine compounded or rectified by him from spirits upon which the full duties of customs or excise have been paid (*r*). The holder of a licence as rectifier or compounder is also entitled to export direct from his licensed premises on drawback tinctures and spirits of wine made by him from duty-paid spirits (*s*).

SUB-SECT. 11.—*Makers of "Sweets."*

Nature of licence.

1331. Every person who manufactures for sale British wines, sweets (*t*), or made wines must take out annually a licence at the current rate in respect of his manufacturing premises (*u*). The licence, whenever taken out, is granted only on payment of the full rate for the year and expires on the 30th September next following the date of issue (*a*).

Penalty for manufacturing without licence.

Any person who manufactures sweets for sale without having in force the proper licence is liable to an excise penalty of £500 (*b*).

Prohibited manufacture.

1332. The Commissioners may make regulations prohibiting the manufacture of sweets by persons other than those who have taken out licences and have made entry of the buildings, places, and utensils to be used in the making and storage of sweets, or in

(*q*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 93; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I.; and see, further, title INTOXICATING LIQUORS, Vol. XVIII., p. 153. The spirits so sent out must be accompanied by a certificate, and an entry made of the particulars of such spirits in the stock-book kept by the rectifier (Spirits Act, 1880 (43 & 44 Vict. c. 24), ss. 105 (4), 112 (1)).

(*r*) *Ibid.*, s. 95. The spirits must be in casks of a capacity of not less than 9 gallons each. Drawback is paid on the proof quantity as found in the casks when they reach the warehouse of deposit. Where the spirits are warehoused for exportation as ship's stores, an allowance of 5*d.* per proof gallon in the case of compounds and 3*d.* in the case of spirits of wine is paid to the rectifier, to cover loss due to excise restrictions and to waste in manufacture (Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 3; Finance Act, 1902 (2 Edw. 7, c. 7), s. 5); and, as to drawbacks, see also pp. 697 *et seq.*, *post*.

(*s*) Revenue Act, 1906 (6 Edw. 7, c. 20), s. 3. The term "tinctures" includes medicinal spirits, flavouring essences and perfumed spirits (*ibid.*, s. 4). Drawback is paid on the proof quantity actually exported, together with an allowance of 3 per cent. for waste in manufacture (Stat. R. & O., 1906, p. 168, r. 7). As to drawbacks, see pp. 697 *et seq.*, *post*.

(*t*) "Sweets" means any liquor made from fruit and sugar, either alone or mixed with any other material, which has undergone a process of fermentation in the course of manufacture. The term includes British wines, made wines, mead and metheglin (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 52).

(*u*) Revenue Act, 1906 (6 Edw. 7, c. 20), s. 7 (2). The rate at present in force is £5 5*s.* (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I.). A licensed distiller may not carry on the business of a maker of sweets upon his distillery premises; see title INTOXICATING LIQUORS, Vol. XVIII., p. 147. As to dealers' and retailers' licences, see pp. 676, 677, *post*.

(*a*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 49 (2).

(*b*) *Ibid.*, s. 50 (1). Failure to comply with any of the statutory regulations of the Commissioners involves a penalty of £50 (Revenue Act, 1906 (6 Edw. 7, c. 20), s. 7 (2)).

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the storage of the materials to be used in the manufacture of sweets (*c*).

Saleable quantities.

1333. A sweets maker may under his licence sell sweets at any one time to one person in any quantity not less than 2 gallons, or not less than two dozen reputed quart bottles (*d*).

SUB-SECT. 12.—*Growers of Tobacco.*

Nature of licence.

1334. Every person who grows (*e*), cultivates, or cures (*f*) tobacco in the United Kingdom is required to take out a licence annually (*g*), which will not be granted except in respect of premises approved by the Commissioners of Customs and Excise (*h*). Whenever taken out, it is obtainable only on payment of the full year's duty and expires on the last day of February next following (*i*).

Penalty for growing tobacco without licence.

Any person who grows, cultivates, or cures tobacco without holding a licence issued in accordance with the regulations of the Commissioners incurs a penalty of £50 and forfeiture of the article in respect of which the offence was committed (*j*).

Bond and entry of premises.

1335. Every grower of tobacco before commencing to grow, and every curer of tobacco before receiving tobacco for curing, must give bond in such amount and in such form as the Commissioners may require that he will comply with all excise regulations in relation to the growth and disposal of the tobacco (*k*). A grower must also in

(*c*) Revenue Act, 1906 (6 Edw. 7, c. 20), s. 7 (2). Makers are required to keep an official entry book in which are to be entered daily the particulars of the quantities and kinds of materials used in manufacture, and the quantities and descriptions of wines or sweets made. An officer of customs and excise may take samples of any sweets or materials for making sweets found on the premises. A monthly return of the quantities made must also be furnished (Stat. R. & O., 1906, p. 159). A maker must also record in the official entry book particulars of all sweets sent out by him and the names of the persons to whom they are sent (Regulations of the Commissioners dated the 8th March, 1912).

(*d*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I.

(*e*) "Growing" includes the sowing the seed of the tobacco plant (Stat. R. & O., 1911, p. 427, r. 1). As to sellers' licences, see p. 678, *post*.

(*f*) "Curing" includes wilting, drying, fermenting, and any process for rendering tobacco fit for manufacture (Stat. R. & O., 1911, p. 427, r. 30).

(*g*) An exemption is allowed to a person growing tobacco in a plot not exceeding 1 pole in area of garden or nursery land solely for botanical, scientific, or ornamental purposes (Finance Act, 1908 (8 Edw. 7, c. 16), s. 3 (3), extended to the United Kingdom by the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 83 (4); Stat. R. & O., 1911, p. 427, r. 29). But a person authorised to grow tobacco free of duty for agricultural or horticultural purposes must hold a licence (Finance Act, 1912 (2 & 3 Geo. 5, c. 8), s. 4).

(*h*) The Commissioners may refuse to grant a licence for any land or premises which they regard as in an objectionable situation in respect of the premises of a tobacco manufacturer (Stat. R. & O., 1911, p. 427).

(*i*) Stat. R. & O., 1911, p. 427, r. 4. The present rate of annual licence duty is 5*s*. (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 83 (2)).

(*j*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 83 (4), applying the Finance Act, 1908 (8 Edw. 7, c. 16), s. 3 (2), (3).

(*k*) Stat. R. & O., 1911, p. 427, r. 6. A grower or curer may also be called upon by the Commissioners to provide a secure compartment in which tobacco may be stored under revenue lock (*ibid.*, r. 20).

each year make and deliver to the proper officer of customs and excise an entry in the prescribed form of the lands and premises which he intends to use for the growing or curing of tobacco (*l*).

Entry book.

1336. A grower must enter in the official tobacco entry book supplied to him particulars of each sowing and planting of tobacco, of all receipts by him of tobacco plants from other licensed growers, and of all deliveries of tobacco from his premises. He must also give notice beforehand in this entry book of his intention to cut or gather tobacco (*m*).

Returns after weighing of year's growing.

1337. Within seven days of the final weighing of the tobacco of any year's growing, a grower is required to furnish to the officer who surveys his premises a return containing particulars of the land sown or planted by him with tobacco, of the varieties grown and the weight of each variety produced (*n*), as well as a return of the particulars of all tobacco received by him from each grower (*o*).

SUB-SECT. 13.—*Manufacturers of Tobacco.*

Licence to make tobacco or snuff.

1338. Every manufacturer of tobacco or snuff is required to take out annually a licence at a rate depending on the weight of tobacco received by him for manufacture in the previous year ending the 5th July (*p*).

Penalty for manufacturing without licence.

Any person who manufactures tobacco without having in force the necessary licence incurs a penalty of £200 (*q*).

Entry of premises.

1339. Before commencing to carry on business, a licensed manufacturer is required to make entry with the local officer of customs and excise of every place which he intends to use for the purposes of his trade (*r*).

Particulars of tobacco received in stock.

1340. All tobacco received into the stock of a tobacco manufacturer must have had the proper duties of customs or excise paid upon it (*s*); and, upon receipt, the particulars of it must be recorded in

(*l*) Stat. R. & O., 1911, p. 427 r. 5. As to excise "entries," see p. 610, *ante*. The entry delivered by a grower cannot be withdrawn while any tobacco remains on or in the entered land or premises (Stat. R. & O., 1911, p. 427, r. 5).

(*m*) Stat. R. & O., 1911, p. 427, r. 9.

(*n*) See p. 626, *ante*.

(*o*) Stat. R. & O., 1911, p. 427, rr. 22, 23.

(*p*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 2; Excise Act, 1840 (3 & 4 Vict. c. 17), s. 1; Tobacco Act, 1840 (3 & 4 Vict. c. 18), s. 9. The rate is £5 5*s*. where the weight of tobacco received does not exceed 20,000 lbs., with an addition of £5 5*s*. for each 20,000 lbs. or fraction of 20,000 lbs., until the maximum rate of £31 10*s*. is reached. The licence to a beginner is granted at the minimum rate, a surcharge being made at the expiration of the year according to the weight of tobacco received (*ibid.*). "Tobacco" includes "snuff" (Tobacco Act, 1842 (5 & 6 Vict. c. 93), s. 14). As to tobacco sellers' licences, see p. 678, *post*.

(*q*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 26.

(*r*) Tobacco Act, 1840 (3 & 4 Vict. c. 18), s. 2. The entry must include any premises adjoining his manufactory in which he carries on the business of a dealer in tobacco or snuff (Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 8).

(*s*) Tobacco Act, 1840 (3 & 4 Vict. c. 18), s. 4; Finance Act, 1908 (8 Edw. 7, c. 16), s. 3 (2); Finance (1910-10) Act, 1910 (10 Edw. 7, c. 8), s. 83 (4). For these duties, see pp. 607, 626, *ante*.

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the official entry book which is required to be kept on the premises and at all times accessible to the official surveying the factory (*t*).

Leaf.

Leaf or unmanufactured tobacco may be received only from a customs or excise bonded warehouse or from the premises of a grower or curer of home-grown tobacco (*u*).

Stalks.

Stalks or returns of tobacco may be received from the premises of another manufacturer, and in not less quantities than 50 lbs. of either description (*a*); and samples not exceeding 4 lbs. weight each may be received from a duty-free warehouse or imported from abroad through the parcel post (*b*).

Samples.

Prohibition against keeping substitutes for tobacco.

1341. A manufacturer of tobacco may not have in his custody or possession any sugar or other saccharine substance not required for the ordinary use of his family, nor any roots or commings of malt, roasted grain, or chicory, nor any lime or sand, other than tobacco sand, nor any earths, weeds, wood, or leaves, other than the leaves of the tobacco plant, nor any substance, matter, or thing to be used or capable of being used as a substitute for tobacco, or for increasing the weight of tobacco or snuff (*c*).

Prohibited ingredients.

1342. In the preparing of tobacco for consumption, a manufacturer may not use any ingredients except water, or, in the case of spun or roll tobacco, water, olive oil, and essential oil (*d*); and, in the preparation of snuff, he may use no other materials than water or essential oil, or the carbonates, chlorides, or sulphates of potassium or sodium, or the carbonate of ammonium, or lime to the extent of 1 per cent. and added in the form of lime water (*e*).

(*t*) Tobacco Act, 1840 (3 & 4 Vict. c. 18), s. 8.

(*u*) *Ibid.*, s. 4; Finance Act, 1908 (8 Edw. 7, c. 16), s. 3 (2); Stat. R. & O., 1909, p. 759 (now annulled). The consignment must be accompanied by an official permit (Tobacco Act, 1840 (3 & 4 Vict. c. 18), s. 4; Stat. R. & O., 1911, p. 427, r. 25).

(*a*) Tobacco Act, 1842 (5 & 6 Vict. c. 93), s. 10. A certificate in the prescribed form, signed by the consignor, must accompany the parcel (*ibid.*).

(*b*) Tobacco Act, 1840 (3 & 4 Vict. c. 18), s. 4. The samples must be accompanied by a label signed by the proper officer of customs and excise (*ibid.*).

(*c*) Tobacco Act, 1842 (5 & 6 Vict. c. 93), s. 5. An offence against the provision would, it is submitted, be committed by the mere possession of any of the substances prohibited by name; see *A.-G.* v. *Lockwood* (1842), 10 M. & W. 464, Ex. Ch. No person is allowed to cut, colour or manufacture, or to have in his possession, any leaves or other things prepared with the intent that they shall be used as substitutes for or be mixed with tobacco or snuff (Tobacco Act, 1842 (5 & 6 Vict. c. 93), s. 8).

(*d*) *Ibid.*, ss. 1, 2; Customs and Inland Revenue Act, 1879 (42 & 43 Vict. c. 21), s. 27. This does not apply in the case of cavendish or negrohead made in bond, where any materials or ingredients, not being the leaves of trees or plants other than the tobacco plant, may be used (Manufactured Tobacco Act, 1863 (26 & 27 Vict. c. 7), s. 3). The olive oil may be used only in the process of spinning and rolling up the tobacco (Customs and Inland Revenue Act, 1879 (42 & 43 Vict. c. 21), s. 27).

(*e*) Tobacco Act, 1842 (5 & 6 Vict. c. 93), s. 1; Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 19; Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 25. Snuff must not contain more than 26 per cent. of these salts, including those naturally in the tobacco, nor more than 13 per cent. of lime or magnesia (Revenue Act, 1867 (30 & 31 Vict. c. 80), s. 19). In practice, manufacturers are allowed to use acetic acid in the preparation

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No manufacturer of tobacco may have in his custody or possession fit for sale tobacco containing more than 32 per cent. of moisture (*f*), or may have in his custody or possession fit for sale, or may tender for drawback, any tobacco containing more than 4 per cent. of oil, under a penalty in either case of £50 and forfeiture of the tobacco (*g*). Prohibited keeping.

1343. A licensed tobacco manufacturer may sell tobacco without further licence at his entered tobacco factory. He may also export British manufactured tobacco on drawback, and may deposit offal, snuff, and other tobacco refuse on drawback in an approved duty-free customs and excise warehouse (*h*). Sale, export, or deposit in warehouse.

SUB-SECT. 14.—*Makers of Vinegar.*

1344. Every person who by any process makes or prepares vinegar or acetous acid for sale (*i*) must take out an annual licence at the current rate (*k*) for the premises on which he carries on the manufacture (*l*). The licence expires on the 5th July following the date of issue (*m*). Nature of licence.

The Commissioners of Customs and Excise may refuse to grant a licence for any premises which they regard as in objectionable proximity to a distillery (*n*). Objectionable premises.

Any person who makes vinegar or acetous acid for sale without being duly licensed is liable to an excise penalty of £100 (*o*). Penalty for selling without licence.

1345. A vinegar maker is required to make entry with the local officer of customs and excise of every building, place, and utensil used by him in the making or storing of vinegar (*p*). Entry of premises.

If he uses a still in the course of his processes, he must comply Control of still.

of tobacco; and objection is not taken to the use of essential oil in flavouring cut tobacco, where the oil used is in the form of a spirit solution. In the making of snuff, Tonquin beans to the extent of 3 per cent. and orris root to the extent of 2 per cent. are also not objected to.

(*f*) Customs and Inland Revenue Act, 1887 (50 & 51 Vict. c. 15), s. 4; Finance Act, 1904 (4 Edw. 7, c. 7), s. 3.

(*g*) Oil in Tobacco Act, 1900 (63 & 64 Vict. c. 35), s. 1.

(*h*) Manufactured Tobacco Act, 1863 (26 & 27 Vict. c. 7), s. 1; Finance Act, 1896 (59 & 60 Vict. c. 28), s. 6; Finance Act, 1897 (60 & 61 Vict. c. 24), s. 3. As to drawbacks, see pp. 697 *et seq.*, *post.*

(*i*) The production of vinegar or acetous acid in the course of manufacture of an independent article of commerce makes a vinegar maker's licence necessary (*A.-G.* v. *Green* (1817), 4 Price, 224; *A.-G.* v. *Houlgrave* (1822), 11 Price, 217; see *A.-G.* v. *Barry* (1859), 4 H. & N. 470).

(*k*) The rate at present in force is £1 (Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), s. 4). A licence at a proportionate part of the yearly rate may be obtained by a beginner (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 17).

(*l*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 26; Vinegar Act, 1844 (7 & 8 Vict. c. 25), s. 2. In practice, the preparation of vinegar from acetic acid by mere dilution with water is not regarded as requiring a vinegar maker's licence to be taken out.

(*m*) Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), s. 4.

(*n*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 26.

(*o*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 12.

(*p*) Vinegar Act, 1844 (7 & 8 Vict. c. 25), s. 3. As to excise entries, see p. 610, *ante.*

SECT. 2. Licences to Manufacture.

with such conditions as the Commissioners may prescribe as to the kind of still which may be used, and the means by which official control of it shall be secured (*q*).

Licence covers still.

1346. The holder of a vinegar maker's licence is entitled without further licence to keep and use a still for the purposes of his business (*r*).

SECT. 3.—*Licences to Carry on Trade or Business.*

SUB-SECT. 1.—*Appraisers.*

Who must be licensed.

1347. Every person, other than a licensed auctioneer or house agent, who exercises the calling of an appraiser (*s*), or who for or in expectation of any fee or reward makes an appraisement liable to stamp duty (*a*), is required to take out a licence as appraiser (*b*).

Penalty for acting without licence.

Any person doing an act for which he ought to hold an appraiser's licence without being duly licensed incurs a penalty of £50 (*c*).

Conditions of grant.

1348. The licence, whenever taken out, can be granted only on payment of the full year's duty and expires on the 5th July next following the date of issue (*d*). If issued at any date between the 5th July and the 5th August it is dated the 6th July (*e*).

SUB-SECT. 2.—*Auctioneers.*

Persons who must be licensed.

1349. Every person is required to take out an auctioneer's licence at the current rate who carries on the business of an auctioneer (*f*), or who acts in such capacity at any sale, or who sells or offers for sale any goods, lands, or hereditaments, or any interest

(*q*) Vinegar Act, 1844 (7 & 8 Vict. c. 25), s. 4.

(*r*) Still Licences Act, 1846 (9 & 10 Vict. c. 90), s. 1. But a person who makes vinegar from wood only (pyroligneous acid) by the use of a still requires a still licence, and not a vinegar maker's licence.

(*s*) See *R.* v. *Little* (1758), 1 Burr. 609; *Atkinson* v. *Fell* (1816), 5 M. & S. 240; and see title VALUERS AND APPRAISERS.

(*a*) See title VALUERS AND APPRAISERS; Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 24. The appraisement, if unstamped, may not be received by the person for whom it was made (*ibid.*). An award requires to be stamped (Revenue Act, 1906 (6 Edw. 7, c. 20), s. 9). As to the publication of the appraisement, see title VALUERS AND APPRAISERS.

(*b*) Appraisers Licences Act, 1806 (46 Geo. 3, c. 43), ss. 4, 5, 7; Revenue (No. 2) Act, 1864 (27 & 28 Vict. c. 56), s. 6. An action by an unlicensed appraiser for work done in making an appraisement of personal property cannot be maintained (*Palk* v. *Force* (1848), 12 Q. B. 666). The licence is not transferable. Bailiffs appointed under the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 33, are, in practice, allowed to appraise in the performance of the duties of their office without licence.

(*c*) Appraisers Licences Act, 1806 (46 Geo. 3, c. 43), s. 6.

(*d*) The rate at present in force is £2 (Revenue Act, 1845 (8 & 9 Vict. c. 76), s. 1).

(*e*) Appraisers Licences Act, 1806 (46 Geo. 3, c. 43), s. 5.

(*f*) Sale by the process of decreasing upon sums named by the auctioneer is sale by auction (Auctioneers Act, 1845 (8 & 9 Vict. c. 15), s. 4); so is sale by tender (*A.-G.* v. *Taylor* (1824), 13 Price, 636); and see title AUCTION AND AUCTIONEERS, Vol. I., p. 500. As to the necessity for exposure at the sale of the auctioneer's name and address, see *ibid.*, p. 506; Auctioneers Act, 1845 (8 & 9 Vict. c. 15), s. 7, the penalty for the breach of which provision is recoverable as an excise penalty; see *ibid.*, s. 3.

therein, at any sale where any person becomes the purchaser by competition, and being the highest bidder, either by being the single bidder or by increasing on the biddings of others or by any other mode of sale by competition (*g*).

Nature of licence.

1350. The licence, whenever taken out, is granted only on payment of the full year's duty and expires on the 5th July next following the date of ssue (*h*).

Penalty for acting without licence.

Failure to take out an auctioneer's licence in any case in which a licence should be held involves a penalty of £100 (*i*).

Sales by licensed auctioneer.

1351. A licensed auctioneer may without further licence exercise the calling of an appraiser or house agent (*k*). He may also sell by auction, upon duly licensed premises, any article for the sale of which an excise licence is specially required (*l*), and he may sell by sample any such articles, if the owner is licensed for the sale thereof in the town or place at which the sale is held (*m*).

Demand of production of licence.

1352. An officer of customs and excise may demand of any person selling by auction the production of an auctioneer's licence, and in default of producing it an immediate deposit of £10 (*n*).

(*g*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 7; Auctioneers Act, 1845 (8 & 9 Vict. c. 15), s. 4. The rate at present in force is £10; and see title AUCTION AND AUCTIONEERS, Vol I., pp. 500, 501.

(*h*) Auctioneers Act, 1845 (8 & 9 Vict. c. 15), s. 4. The licence, being a personal one, is not transferable. But a sale which takes place by a servant in the presence of and with the consent of the master is covered by the master's licence (*R.* v. *Faraday and Wood* (1830), 1 B. & Ad. 275).

(*i*) Auctioneers Act, 1845 (8 & 9 Vict. c. 15), s. 4.

(*k*) Appraisers Licences Act, 1806 (46 Geo. 3, c. 43), s. 7; Revenue (No. 1) Act, 1861 (24 & 25 Vict. c. 21), s. 13. As to these licences, see p. 648, *ante*, and p. 659, *post*.

(*l*) Auctioneers Act, 1845 (8 & 9 Vict. c. 15), s. 6; Revenue (No. 2) Act, 1864 (27 & 28 Vict. c. 56), s. 14. In the case of the sale of intoxicating liquors belonging to a licensed trader, the sale must be only in such quantities and to such persons as the trader's licence authorises. If an auctioneer is employed to sell wines or spirits by auction, he is personally liable for the duty on the liquors sold, if it turns out that in fact the duty has not been paid on them (*A.-G.* v. *Thornton* (1824), 13 Price, 805).

(*m*) Revenue (No. 2) Act, 1864 (27 & 28 Vict. c. 56), s. 14. The Commissioners of Customs and Excise have also a discretionary power to allow the sale by a licensed auctioneer of such commodities the property of a private person and not sold for profit or by way of trade. The fact that a continuous line of houses connects the place where the sale by auction is carried on with that in which the licensed shop is situate is not sufficient to constitute the place of sale the "same town or place" as that in which the licence is held (*Casey* v. *Rose* (1900), 82 L. T. 616). An auctioneer may, however, require to be licensed as a hawker if he goes from town to town selling at the different towns goods which have been sent on in advance (*R.* v. *Turner* (1821), 4 B. & Ald. 510); and this is so even if he takes a room for a few days for the purpose of selling there (*Hudson* v. *Shooter* (1891), 55 J. P. 325); but not if the house in which the sale is held has been taken *bonâ fide* for a term (*Hawkins* v. *Fenwick* (1858), 32 L. T. (o. s.) 104). As to hawkers' licences, see pp. 657 *et seq.*, *post*; and see title MARKETS AND FAIRS, Vol. XX., p. 55, note (*h*).

(*n*) Auctioneers Act, 1845 (8 & 9 Vict. c. 15), s. 8. The making of this deposit, or the suffering of any penalty in default of making it, does not affect any proceedings to which the party may be liable for selling by auction without a licence (*ibid.*). As to repayment of the deposit on production of licence, see title AUCTION AND AUCTIONEERS, Vol. I., p. 507.

SECT. 3. Licences to Carry on Trade or Business.

1353. Certain persons selling by auction are by statute or in practice exempted from the requirement to take out an auctioneer's licence (*o*).

SUB-SECT. 3.—*Beer Dealers.*

Persons exempted. Who must be licensed.

1354. Every person, other than a licensed brewer of beer for sale selling beer of his own manufacture (*p*), who sells beer in quantities of 4½ gallons or two dozen reputed quart bottles or upwards at any one time to one person must take out annually a wholesale beer dealer's licence (*q*) at the current rate (*r*).

Penalty for dealing without licence.

Any person who deals in beer without having in force the licence necessary to authorise him to do so is liable to an excise penalty of £100 (*s*).

Nature of licence.

1355. The licence does not authorise sale in less quantities than 4½ gallons or two dozen reputed quart bottles, and expires on the 30th June next following the grant, and may be granted, transferred, or renewed without a justices' certificate (*t*).

Entry of premises.

1356. Every holder of a licence to deal in beer is required to make entry, with the officer of customs and excise for the district, of the premises intended to be used for the purposes of the business (*a*).

Prohibited articles and use of articles.

1357. A licensed beer dealer may not have in his possession any sugar or other saccharine substance, except for domestic use, nor any preparation for increasing the gravity of beer (*b*). He is also

(*o*) See Customs and Inland Revenue Act, 1870 (33 & 34 Vict. c. 32), s. 5; Auctioneers Act, 1845 (8 & 9 Vict. c. 15), s. 5; and see title AUCTION AND AUCTIONEERS, Vol. I., p. 501; see *ibid.*, note (*p*); and see title COUNTY COURTS, Vol. VIII., p. 565.

(*p*) For the powers of sale of a brewer for sale, see p. 631, *ante*.

(*q*) Excise Act, 1860 (23 & 24 Vict. c. 113), s. 36; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched I., B; and see, further, title INTOXICATING LIQUORS, Vol. VIII., pp. 11, 12.

(*r*) The rate at present in force is £10 10*s.*; but where the licence is taken out by a person who is the holder of a beer retailer's licence (see the text, *infra*) for the same premises, the duty payable on the wholesale dealer's licence may be reduced by 50 per cent. Such reduction must not, however, reduce the total duty payable for the combined licences to less than that which would have been payable for the wholesale dealer's licence alone (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., B, provision 4). A beginner may obtain a licence at a proportionate part of the full rate according to the proportion which the period for which it will be in force bears to the whole year (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 17); Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 8; and see title INTOXICATING LIQUORS, Vol. XVIII., p. 18.

(*s*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 50 (2).

(*t*) *Ibid.*, s. 49 (2); Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 21; and see title INTOXICATING LIQUORS, Vol. XVIII., p. 19. The transfer is indorsed on the licence and signed by the surveyor and the collector of customs and excise for the district.

(*a*) Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 19. As to "excise entry," see p. 610, *ante*.

(*b*) Finance Act, 1896 (59 & 60 Vict. c. 28), s. 11 (1). A grocer who is also a dealer in beer may, however, have sugar in his possession in the ordinary course of his trade as a grocer (*ibid.*, s. 11 (3)); and see, further,

prohibited from using in the preparation of beer for sale any saccharine, or any chemical substances of a like nature or use, and he must not have in his possession any of these substances or any beer in which they have been used (*c*). He must not dilute beer nor add anything to it except finings (*d*).

SUB-SECT. 4.—*Beer Retailers.*

(i.) *"On" Licences.*

Nature of licence.

1358. A licence to retail beer for consumption on the premises authorises the sale of beer, cider, or perry for consumption, either on or off the premises, in quantities not exceeding 4½ gallons or two dozen reputed quart bottles at any one time to one person (*e*).

Whenever taken out it expires on the 30th September next following the date of issue (*f*).

To whom licence granted.

1359. The licence can only be granted to the holder of a justices' certificate (*g*), who must not be a sheriff's officer or officer executing the legal process of any court, or have been convicted of felony or certain specified offences against the licensing Acts (*h*).

Penalty for selling without licence.

1360. Any person who sells beer by retail without having in force the licence required to enable him to do so is liable either to an excise penalty of £50 or to an excise penalty equal to treble the amount of the full duty at the election of the Commissioners of Customs and Excise (*i*).

title INTOXICATING LIQUORS, Vol. XVIII., p. 140. No excise licence is required for the sale of spruce or black beer, although such beer is liable to beer duty (see p. 613, *ante*); but a licence must be taken out by any person selling ale, porter, or any other description of beer (other than spruce or black beer), or any liquor which is made or sold as a description of beer, or as a substitute for beer, and which, on analysis of a sample thereof at any time, is found to contain more than 2 per cent. of proof spirit (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 52; *Howorth* v. *Minns* (1886), 51 J. P. 7); and where a liquid is sold as beer and has the ordinary gravity of beer, a licence is required for its sale, although it does not contain more than 2 per cent. of proof spirit (*Fairhurst* v. *Price*, [1912] 1 K. B. 404); and see title INTOXICATING LIQUORS, Vol. XVIII., p. 6.

(*c*) Treasury Order in the *London Gazette* of the 18th May, 1888, made under the Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 5. Use in the preparation of beer of one of the prohibited substances involves forfeiture of the beer and liability to a fine of £50 (Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 5).

(*d*) Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 8 (2). Dilution of a beer may take place by mixing a weaker beer with it (*Crofts* v. *Taylor* (1887), 19 Q. B. D. 524); see also titles FOOD AND DRUGS, Vol. XV., p. 45; INTOXICATING LIQUORS, Vol. XVIII., p. 145.

(*e*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C, Provisions applicable to Retailers' Licences, 1. This licence is covered by the "on" licence taken out by a retailer of spirits; see Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C, Provisions applicable to Retailers' On-Licences, 2; pp. 669 *et seq.*, *post*; and, as to beer retailers' on-licences, see, further, title INTOXICATING LIQUORS, Vol. XVIII., p. 13.

(*f*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 49 (2).

(*g*) As to the grant of justices' certificates, see title INTOXICATING LIQUORS, Vol. XVIII., pp. 21 *et seq.*

(*h*) Beerhouse Act, 1840 (3 & 4 Vict. c. 61), s. 7; Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), ss. 1, 35; and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 13, 54 *et seq.*

(*i*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 50 (8).

SECT. 3. Licences to Carry on Trade or Business.

Entry.

Entry (*k*) must be made with the local officer of customs and excise of the premises for which it is desired to take out the licence (*l*).

Annual licence duty.

1361. The annual duty payable on a beer retailer's on licence is equal to a third of the annual value of the licensed premises, subject to a scale of minimum rates depending upon the population of the urban area within which the premises are situated (*m*), and subject to a deduction of one-seventh in the case of a six-day or early-closing licence, and of two-sevenths in the case of a six-day and early-closing licence (*n*).

Prohibited possession and use of articles.

1362. A retailer of beer may not receive or have in his custody or possession any sugar or other saccharine substance, except for his domestic use, or in the course of his trade as a grocer where he carries on the business of a grocer upon his beer retailer's premises, or any preparation for increasing the gravity of beer (*o*).

(*k*) For excise "entry," see p. 610, *ante*.

(*l*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 21; and see title INTOXICATING LIQUORS, Vol. XVIII., p. 19.

(*m*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C. The following is the scale of minimum rates:—

	£	*s.*	*d.*
In areas which are not urban areas, and in urban areas with a population of less than 2,000 . . .	3	10	0
In urban areas with a population of—			
2,000 and less than 5,000	6	10	0
5,000 ,, ,, 10,000	10	0	0
10,000 ,, ,, 50,000	13	0	0
50,000 ,, ,, 100,000	20	0	0
100,000 and above	23	10	0

and, where the annual value of the premises exceeds £500, the licence may be granted, at the option of the applicant, on payment of an amount equal to one-third of the annual licence value, that is, one-third of the amount by which the annual value of the premises as licensed premises exceeds the annual value which the premises would have if they were not licensed, provided that the duty so payable shall not be less than £166 13*s.* 4*d.* (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C, Provisions applicable to Retailers' On-Licences, 3). In the case of a *bonâ fide* restaurant in which the receipts from the sale of intoxicating liquors do not exceed two-thirds of the total receipts, and in the case of a *bonâ fide* hotel in which they do not exceed one-third of such receipts, a licence may be granted on payment of an amount bearing the same proportion to the full duty payable as the receipts from the sale of intoxicating liquor bear to the total receipts, but so that the duty paid shall not in any case be less than one-fifteenth of the full duty nor less than the minimum rates given above (*ibid.*, s. 45 (1)). A licence at a proportionate part of the full year's duty may be obtained by a beginner according to the proportion which the period for which it will be in force bears to the whole year (Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 8). The full compensation fund charge (if any) for the year must be paid before the licence can be granted; see title INTOXICATING LIQUORS, Vol. XVIII., p. 73.

(*n*) Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 60; and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 61, 62. This reduction applies in the case of a licence obtained on payment of a reduced duty under the conditions set out in note (*m*), *supra*, provided that the duty thereby payable is not less than one-third of the annual licence value of the premises (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 45 (6), as amended by the Finance Act, 1912 (2 & 3 Geo. 5, c. 8)). As to the right of a lessee of licensed premises to make a deduction from the rent of a portion of the licence duty paid by him in certain cases, see note (*b*), p. 669, *post*.

(*o*) Finance Act, 1896 (59 & 60 Vict. c. 28), s. 11; and see title INTOXICATING LIQUORS, Vol. XVIII., p. 140.

He is also subject to the same restrictions as a beer dealer as to the possession and use of saccharine, and substances of a like nature or use, and as to the dilution of beer (*p*).

(ii.) *"Off" Licences.*

Nature of licence.

1363. A beer retailer's "off" licence must be taken out annually in respect of any premises (*q*) used for the sale, for consumption off the premises only, of beer in quantities not exceeding 4½ gallons or two dozen reputed quart bottles at any one time to one person (*r*).

Any person who sells beer by retail "off" the premises without having in force the necessary licence incurs a penalty of £50, or treble the amount of the duty, at the election of the Commissioners (*s*).

A retailer's "off" licence for the sale of any intoxicating liquor cannot be granted to the holder of a retailer's "on" licence if the "off" licence authorises the sale of any liquor which the holder of the "on" licence is not authorised to sell by retail (*t*).

Grantees and term of licence.

1364. It can only be granted to the holder of a justices' licence (*u*) who is not a person disqualified by law to sell beer by retail (*a*), and expires on the 30th September in each year, except in the case of a licence taken out by a person who holds a wholesale beer dealer's licence for the same premises, when it expires on the 30th June (*b*).

Entry of premises.

1365. An applicant for the licence must make entry (*c*) of the premises to be licensed with the local officer of customs and excise.

Duty.

1366. The duty payable on the licence is regulated by a scale fixed according to the annual value of the licensed premises (*d*).

(*p*) Treasury Order made under the Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 5; see the text, *supra*.

(*q*) But the sale of beer by retail for consumption "off" the premises is covered by the spirit retailer's on-licence and by the beer retailer's on-licence; see Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C, Provisions applicable to Retailers' On-Licences, 1, 2. For definition of "beer," see note (*g*), p. 630, *ante*.

(*r*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C, Provisions applicable to Retailers' Licences, 1; and see title INTOXICATING LIQUORS, Vol. XVIII., p. 13.

(*s*) Finance (1909–10) Act, 1910 (10 Edw. 7, c. 8), s. 50 (3).

(*t*) *Ibid.*, Sched. I., C, Provisions applicable to Retailers' Licences General, 2.

(*t*) Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 1; and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 21 *et seq.*

(*a*) Beerhouse Act, 1834 (4 & 5 Will. 4, c. 85), s. 16; and, as to disqualified persons, see, further, title INTOXICATING LIQUORS, Vol. XVIII., pp. 54 *et seq.*

(*b*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 49 (3); see p. 650, *ante*.

(*c*) As to excise entry, see p. 610, *ante*.

(*d*) The scale at present in force is as follows:—

	£	*s.*	*d.*
Where the annual value does not exceed £10 . .	1	10	0
Exceeds £10 but does not exceed £20 . .	2	0	0
„ £20 „ „ £30 . .	2	10	0
„ £30 „ „ £50 . .	3	0	0
„ £50 „ „ £75 . .	3	10	0
„ £75 „ „ £100 . .	4	0	0
„ £100 „ „ £250 . .	4	10	0
„ £250 „ „ £500 . .	7	0	0
„ £500	10	0	0

(Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C, scale 6).

SECT. 3. **Licences to Carry on Trade or Business.**

Prohibited possession and use of articles.

1367. A holder of a beer retailer's "off" licence is subject to the same restrictions as a holder of a beer retailer's "on" licence as to the receipt, custody, or possession of sugar or other saccharine substances, as to beer dilution (*e*), and as to the use of saccharine in beer (*f*).

SUB-SECT. 5.—*Canteens.*

When licence required.

1368. Except in the case of canteens which are under the control of a committee of the officers of the regiment and managed by an officer who has no interest in the profits (*g*), a licence is required for the sale of intoxicating liquors in a military or naval canteen.

To whom granted.

It is granted only to a person who holds the prescribed authority from a Secretary of State or the Admiralty, and it follows the terms of the certificate of authorisation under which it is issued. No justices' licence need be held (*h*).

Entry of premises.

1369. Where the premises to be licensed as a canteen are of a permanent character, entry is made of them with the local officer of customs and excise in the usual way.

SUB-SECT. 6.—*Cider or Perry Retailers.*

(i.) "*On*" *Licences.*

Who must be licensed.

1370. Any person, not being the holder of a publican's or a beerhouse licence, who sells cider or perry in retail quantities (*i*) for consumption on the premises must take out a licence, the rate of duty upon which depends on the annual value of his premises (*k*).

(*e*) Finance Act, 1896 (59 & 60 Vict. c. 28), s. 11; see note (*o*), p. 653, *ante*.

(*f*) Treasury Order in the *London Gazette* of the 18th May, 1888, made under the Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 5; see the text, *supra*.

(*g*) This is what is known as the "regimental system." The supply of liquor is on the same footing as in the case of a club, as to which see p. 616, *ante*; and see title CLUBS, Vol. IV., pp. 429 *et seq.* The licence duty is charged at the minimum rates applicable to the sale of liquor under a publican's licence (see note (*m*), p. 671, *post*) and a beer retailer's on-licence (see p. 652, *ante*) respectively, that is £5 and £3 10*s.* per annum. In the case of a temporary canteen granted for a short period specified in the authority (see the text, *infra*), it is the practice to charge licence duty only for the period during which the canteen is actually authorised to be in operation.

(*h*) Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 111 (1), (2): and see, further, title INTOXICATING LIQUORS, Vol. XVIII., p. 106. A certificate of authority signed by the general officer commanding the military district is accepted. It sets out that the authority is to continue in force "until further orders" (Army Form F. 705).

(*i*) That is, in quantities less than 4½ gallons or two dozen reputed quart bottles at any one time to one person (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched., I., C, Provisions applicable to Retailers' Licences, 1 (b); and see title INTOXICATING LIQUORS, Vol. XVIII., p. 13.

(*k*) Beerhouse Act, 1834 (4 & 5 Will. 4, c. 85), s. 15; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C. The scale at present in force is as follows:—

	£	*s.*	*d.*
Where the annual value is under £30 . . .	2	5	0
£30 and under £50	3	0	0
£50 ,, £100	4	10	0
£100 and over	6	0	0

A licence may be obtained by a beginner for a proportionate part of the duty, which must bear to the full amount of the duty the same proportion

The persons who are disqualified from obtaining a licence to sell beer by retail are also disqualified from holding this licence (*l*). Disqualifications.

1371. The applicant is required to hold the appropriate justices' licence (*m*), and must make entry of his premises with the local officer of customs and excise (*n*). Entry of premises.

1372. The licence, whenever taken out, expires on the 30th September next following the date of issue (*o*). Duration of licence.

1373. Any person selling cider or perry in retail quantities without having in force the appropriate licence incurs an excise penalty of £50, or an excise penalty equal to treble the amount of the full duty, at the election of the Commissioners (*p*). Penalty for selling without licence.

(ii.) "*Off*" *Licences.*

1374. A licence to retail cider for consumption off the premises authorises the sale of cider or perry in quantities of less (*q*) than 4½ gallons or two dozen reputed quart bottles at any one time to one person (*r*). Nature of licence.

The licence is only granted to the holder of a justices' licence who is not a person under any legal disqualification to hold a licence to retail beer (*s*). It expires on the 30th September next following the date of issue (*t*). To whom granted. Term.

as the period for which the licence will be in force bears to a whole year (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 18, as amended by s. 8 of the Finance Act, 1911 (1 & 2 Geo. 5, c. 48)); and see title INTOXICATING LIQUORS, Vol. XVIII., p. 18. An abatement of one-seventh of the duty is allowed where the licence is a six-day or an early-closing licence (Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 60); and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 91, 92.

(*l*) Beerhouse Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 64), s. 2; see p. 651, *ante*; and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 13, 54 *et seq.*

(*m*) Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 1; and see title INTOXICATING LIQUORS, Vol. XVIII., p. 16.

(*n*) Beerhouse Act, 1840 (3 & 4 Vict. c. 61), s. 9. As to excise entries, see p. 610, *ante.*

(*o*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 49 (2).

(*p*) *Ibid.*, s. 50 (3).

(*q*) No licence is required for the sale of cider or perry for consumption off the premises in quantities of 4½ gallons or two dozen quarts or upwards.

(*r*) Beerhouse Act, 1834 (4 & 5 Will. 4, c. 85), s. 15; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C, Provisions applicable to Retailers' Licences, 1 (b); and see title INTOXICATING LIQUORS, Vol. XVIII., p. 15.

(*s*) Beerhouse Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 64), s. 2; Beerhouse Act, 1834 (4 & 5 Will. 4, c. 85), s. 1; Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 1. For list of persons disqualified to hold a beer retailer's licence, see title INTOXICATING LIQUORS, Vol. XVIII., pp. 13, 54 *et seq.* In the case of premises in respect of which a licence was not in force prior to the 10th August, 1872, a justices' licence is not granted unless the premises are of a minimum annual value varying from £12 to £30 according to the population of the town or administrative area within which they are situated (Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), Sched. V., Part II.).

(*t*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 49. The duty payable is a fixed sum of £2 annually, irrespective of the value of the premises (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C, scale 4); but a

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Entry of premises.

1375. The applicant must make entry with the local officer of customs and excise of the premises for which the licence is to be taken out (*a*).

Penalty for selling without licence.

1376. A like penalty is incurred for the unlicensed sale of cider for consumption "off" the premises as in the case of sale for consumption "on" the premises (*b*).

SUB-SECT. 7.—*Game Dealers.*

Necessity for revenue licence.

1377. An excise licence as a dealer (*c*) in game is required to be taken out annually in respect of any house, shop or stall in which a person deals in hares, pheasants, partridges, grouse or moor game, black game or bustards (*d*).

Local council's licence.

The applicant must already hold a game dealer's licence granted to him by the county, borough, or district council of the area within which the shop is situated (*e*), specifying exactly the house, shop or stall licensed (*f*).

Term of revenue licence.

1378. The licence, whenever taken out, may be granted only on payment of the full year's duty and expires on the 1st July next following the date of issue (*g*).

licence for a part of the year only may be obtained by a beginner (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 18, as amended by the Finance Act, 1911 (1 & 2 Geo. 5, c. 48)), s. 8; and see title INTOXICATING LIQUORS, Vol. XVIII., p. 18.

(*a*) Beerhouse Act, 1840 (3 & 4 Vict. c. 61), s. 9. As to excise entry, see p. 610, *ante*.

(*b*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 50 (3); as to this, see the text, *supra*.

(*c*) A person "deals" when he buys to sell again (*R.* v. *Excise Commissioners* (1788), 2 Term Rep. 381; *McKenzie* v. *Day*, [1893] 1 Q. B. 289).

(*d*) Game Act, 1831 (1 & 2 Will. 4, c. 32), s. 2; Game Licences Act, 1860 (23 & 24 Vict. c. 90), ss. 2, 14; Revenue (No. 2) Act, 1861 (24 & 25 Vict. c. 91), s. 17; and see *Lazenby* v. *M'Arthur* (1874), 2 Rettie (Justiciary Cases), 6. As to the meaning of "game" in this connection, see title GAME, Vol. XV., pp. 208, 258, note (*o*), 259, note (*t*).

(*e*) As to this licence, see title GAME, Vol. XV., pp. 254, 255. As to the necessity for affixing the name of the game dealer and the words "Licensed to deal in Game" to his place of business, see *ibid.*, p. 256. As to the power of innkeepers to sell game for consumption on their premises although they are unlicensed, see *ibid.*, pp. 255, note (*t*), 261, note (*u*). The holder of the council's licence must not deal in game unless he has obtained an excise licence; see *ibid.*, p. 258.

(*f*) Game Licences Act, 1860 (23 & 24 Vict. c. 90), s. 15; Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 27, 32. As to persons disqualified from holding a game dealer's licence, see title GAME, Vol. XV., p. 255.

(*g*) Game Licences Act, 1860 (23 & 24 Vict. c. 90), ss. 2, 16; Customs and Inland Revenue Act, 1883 (46 & 47 Vict. c. 10), s. 4. The rate of duty at present in force is £2. The council's licence may become void during the period of its currency if the holder is convicted of any offence against the Game Act, 1831 (1 & 2 Will. 4, c. 32). In such an event the excise licence would, it is submitted, become void also; see *Lazenby* v. *M'Arthur* (1874), 2 Rettie (Justiciary Cases), 6. The excise licence is transferable during its currency into the name of a person who has obtained a transfer of the council's licence (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 18). The duty on game dealers' licences is now levied throughout England and Wales by the county councils (Finance Act, 1908 (8 Edw. 7, c. 16), s. 6; Stat. R. & O., 1908, p. 470); see p. 684, *post*; and see title LOCAL GOVERNMENT, Vol. XIX., pp. 350—352.

1379. Any person who deals in game without holding the necessary excise licence incurs a penalty of £20 (*h*). Proceedings for recovery of the penalty may only be taken by order of the proper county council or county borough council and in the name of its selected officer (*i*). Penalty for dealing without licence.

1380. A game dealer may purchase game only from the holder of a full year's licence to kill game (*k*), from a gamekeeper authorised by his master to sell game (*l*), from another licensed game dealer (*m*), or, in the case of hares, from an occupier of land who may lawfully kill ground game (*n*). Purchases by game dealer.

A game dealer may not buy or sell or have in his house, possession, or control any game, including live game, during the close time, except where the birds are kept for the purpose of breeding or of sale alive (*o*). Possession in close time.

SUB-SECT. 8.—*Hawkers.*

1381. A hawker's (*p*) licence must be taken out by every person (*q*) who travels with a horse or other beast bearing or drawing burden, and goes from place to place (*r*) or to other men's houses carrying to sell or exposing for sale any goods, wares or merchandise, or exposing samples or patterns of goods to be afterwards delivered (*s*); and by every person who travels by any means of locomotion (*t*) to Who must be licensed.

(*h*) Game Licences Act, 1860 (23 & 24 Vict. c. 90), s. 14; and see title GAME, Vol. XV., p. 258.

(*i*) Stat. R. & O., 1908, p. 470, rr. I., XI.

(*k*) See title GAME, Vol. XV., pp. 246 *et seq.*, 256; and see p. 694, *post.*

(*l*) See title GAME, Vol. XV., pp. 242, 256.

(*m*) See *ibid.*, p. 256.

(*n*) Game Act, 1831 (1 & 2 Will. 4, c. 32), ss. 17, 28; Ground Game Act, 1880 (43 & 44 Vict. c. 47), s. 4; *R.* v. *Muirhead* (1887), 51 J. P. 760; and see title GAME, Vol. XV., p. 248. As to persons entitled to kill ground game, see *ibid.*, pp. 221 *et seq.*

(*o*) Game Act, 1831 (1 & 2 Will. 4, c. 32), s. 4; Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 10; and see title GAME, Vol. XV., p. 259. As to the close time, see title GAME, Vol. XV., pp. 209 *et seq.*

(*p*) As to hawkers generally, see title MARKETS AND FAIRS, Vol. XX., pp. 55 *et seq.*

(*q*) The person may be a co-operative society registered under the Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), which carries on the trade of hawking through a servant (*Co-operative Drapery and Furnishing Society, Ltd.* v. *Bligh* (1902), 66 J. P. 215). A servant may, however, travel with his master's licence and trade for his master's benefit (Hawkers Act, 1888 (51 & 52 Vict. c. 33), s. 5 (2)).

(*r*) It is not necessary that the person should have gone to more places than one in order to become liable to take out the licence (*A.-G.* v. *Tongue* (1823), 12 Price, 51; *A.-G.* v. *Woolhouse* (1827), 12 Price, 65; *Manson* v. *Hope* (1862), 2 B. & S. 498, nor need he convey the goods himself (*Dean* v. *King* (1821), 4 B. & Ald. 517).

(*s*) The fact that the persons to whom the goods were offered or sold had already been visited by a canvasser to whom they expressed a desire to see them would not make a hawker's licence unnecessary (*Holland* v. *Hall* (1902), 86 L. T. 355); nor would the fact that the sales were made to regular customers, if it could not be known until the van called what goods the customer would want or whether he would want any (*O'Dea* v. *Crowhurst* (1899), 80 L. T. 491).

(*t*) A travelling auctioneer who goes from town to town taking a room for a few days and selling by auction the goods of other persons must take out a hawker's licence (*Hudson* v. *Shooter* (1891), 55 J. P. 325). But if

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any place in which he does not usually reside or carry on business and there sells or exposes for sale any goods, wares or merchandise in or at any house, shop, room, booth, stall or other place hired or used by him for the purpose (*a*).

The licence.

1382. The licence (*b*), whenever taken out, can be granted only on payment of the full licence duty for the year, and expires on the 31st March next following the date of issue (*c*).

Penalty for acting without licence.

1383. Any person doing an act for which a hawker's licence is required without having a licence in force is liable to a penalty of £10, and if found committing the offence may be arrested by an officer of customs and excise or police (*d*).

Trading not permitted by licence.

1384. A hawker's licence does not authorise the holder to trade in articles expressly forbidden by statute to be hawked (*e*), or which may be hawked only subject to special conditions or by the holder of a further excise licence (*f*); nor is the holder of such licence entitled to trade as a hawker in a particular locality in defiance of a bye-law duly made (*g*), or without the special permission required by a local Act (*h*).

Hawking not requiring a licence.

1385. A hawker's licence is not required for the sale by hawking of fish, fruit, victuals (*i*), or coal; nor for the selling or exposing for

the house in which the sale takes place is taken *bonâ fide* for a term, a hawker's licence is not necessary (*Hawkins* v. *Fenwick* (1858), 32 L. T. (o. s.) 104).

(*a*) Hawkers Act, 1888 (51 & 52 Vict. c. 33), s. 2.

(*b*) As to the necessary qualifications of an applicant for a licence, see title MARKETS AND FAIRS, Vol. XX., p. 57. Where a corporation requires to be licensed as a hawker, its representative would be entitled to require the licence to be issued to him on behalf of the corporation if he produced a certificate of his own personal good character; see *Co-operative Drapery and Furnishing Co., Ltd.* v. *Bligh* (1902), 4 Fraser (Justiciary Cases), 97, *per* the LORD JUSTICE CLERK. As to the effect of a licence granted on a forged certificate of character, see title MARKETS AND FAIRS, Vol. XX., p. 57, note (*a*).

(*c*) Hawkers Act, 1888 (51 & 52 Vict. c. 33), s. 3 (2). The annual rate at present in force is £2. As to the duty of hawkers to exhibit their names and the words "Licensed Hawker" and, as to the unlawful use of these words, see title MARKETS AND FAIRS, Vol. XX. p. 57.

(*d*) Hawkers Act, 1888 (51 & 52 Vict. c. 33), s. 6 (1) (3); and see title MARKETS AND FAIRS, Vol. XX., p. 56, note (*k*).

(*e*) Such are playing cards, under the Revenue Act, 1862 (25 & 26 Vict. c. 22), s. 31 (see p. 598, *ante*); explosives, under the Explosives Act, 1875 (38 & 39 Vict. c. 17), ss. 30, 39 (see title EXPLOSIVES, Vol. XIV., pp. 380, 381); spirits, under the Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 146 (see title INTOXICATING LIQUORS, Vol. XVIII., p. 115); tobacco, under the Tobacco Act, 1842 (5 & 6 Vict. c. 93), s. 13 (see p. 679, *post*); stamps, under the Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 6 (see p. 703, *post*).

(*f*) Such are gold and silver plate, for the sale of which a hawker's plate licence is necessary under the Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 1 (see p. 666, *post*); and petroleum, under the Petroleum (Hawkers) Act, 1881 (44 & 45 Vict. c. 67); see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 575, 576.

(*g*) *Simson* v. *Moss* (1831), 2 B. & Ad. 543.

(*h*) *Openshaw* v. *Oakeley* (1889), 60 L. T. 929.

(*i*) "Victuals" includes anything which forms a constituent of the food of man (*R.* v. *Hodgkinson* (1829), 10 B. & C. 74).

sale of any goods, wares or merchandise in a legally established market or fair (*k*); nor for the selling or seeking orders for any article from a person who is a dealer in such article and who buys to sell again (*l*); and a person who is the real worker or maker of any goods may, either by himself or by his children, apprentices, or servants usually residing in the same house with him, sell or expose for sale such goods without taking out a hawker's licence (*m*).

SUB-SECT. 9.—*House Agents.*

Who must be licensed.

1386. Every person who as agent for any other person, for or in expectation of any fee or reward, sells or advertises for sale or for letting, or who in any way negotiates for the sale or letting of any furnished house or part of a furnished house, or who by any means holds himself out to the public as an agent for selling or letting furnished houses, must take out an annual licence as house agent (*n*).

House agent and appraiser.

1387. Any person holding a licence as house agent is authorised without further licence to exercise the trade of an appraiser also (*o*).

The licence.

1388. The licence, whenever taken out, is granted only on payment of the duty for the whole year and expires on the 5th July next following the date of issue (*p*).

Penalty for acting without licence.

1389. Any person who exercises the calling of a house agent without being duly licensed incurs a penalty of £20 (*q*).

Who need not be licensed.

1390. A licence as house agent is not required to be taken out by (*r*):—

(1) Any person by reason only of his letting or agreeing or offering to let, or in any way negotiating for the letting of, any house of an annual rent or value not exceeding £25;

(2) Any licensed auctioneer or appraiser;

(3) Any agent employed in the management of landed estates;

(*k*) The exemption does not apply to sales in a *de facto* market (*Benjamin* v. *Andrews* (1858), 5 C. B. (N. S.) 299; *Jay* v. *Smales* (1900), unreported); see title MARKETS AND FAIRS, Vol. XX., p. 57, note (*p*).

(*l*) A licensed dealer in motor spirit may sell and deliver motor spirit from vans to another dealer without taking out a hawker's licence (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 84 (6)); see p. 662, *post*.

(*m*) Hawkers Act, 1888 (51 & 52 Vict. c. 33), s. 3. The servants or agents must be such as reside in the same house with the maker as part of his family (*R.* v. *Mainwaring* (1829), 10 B. & C. 66); and see, further, title MARKETS AND FAIRS, Vol. XX., pp. 56, 57.

(*n*) Revenue (No. 1) Act, 1861 (24 & 25 Vict. c. 21), s. 10. Part of a house must, in order to be regarded as within this definition, be a part rated and let as a separate tenement (*ibid.*).

(*o*) *Ibid.*, s. 11. As to appraisers' licences, see p. 648, *ante*.

(*p*) Revenue (No. 1) Act, 1861 (24 & 25 Vict. c. 21), Sched. B. The rate at present in force is £2. Where a house agent's licence is issued between the 5th July and the 5th August it bears date on the 6th July (*ibid.*, s. 11). The licence is not transferable.

(*q*) *Ibid.*, s. 12.

(*r*) *Ibid.*, s. 13.

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(4) Any solicitor, law agent, writer to the signet, or conveyaneer, who has as such taken out his annual certificate (*s*).

SUB-SECT. 10.—*Medicine Vendors.*

Who must be licensed.

1391. A patent medicine (*t*) licence at the current rate must be taken out yearly, in respect of the premises in which he carries on the business, by every person who sells or exposes for sale, or who keeps ready for sale, any medicine liable to excise medicine label duty (*a*).

The licence.

1392. The licence, whenever taken out, is granted only on payment of the full year's licence duty and expires on the 1st September next following the date of issue (*b*). It covers the making or compounding of patent medicines as well as their sale (*c*).

Penalty for selling without licence.

1393. Any person who sells patent medicines liable to medicine label duty without having in force a patent medicine licence incurs a penalty of £20 (*d*).

SUB-SECT. 11.—*Methylated Spirit Retailers.*

Who must be licensed.

1394. Every retailer of methylated spirits (*e*) is required to take out a licence expiring annually on the 30th September in respect of the premises in which he carries on the sale of the spirits (*f*).

Who cannot be licensed.

1395. The licence cannot be granted to a distiller or rectifier, nor to a person licensed to retail beer, spirits, wine, or sweets for consumption on the premises (*g*).

Penalty for selling without licence.

1396. Any person who sells methylated spirits without being duly licensed is liable to a penalty of £50 (*h*).

(*s*) Under the Stamp Act, 1891 (54 & 55 Vict. c. 39); and see title SOLICITORS.

(*t*) As to the meaning of "patent medicine," see p. 634, *ante;* and see title MEDICINE AND PHARMACY, Vol. XX., pp. 377, 378.

(*a*) Medicines Stamp Act, 1802 (42 Geo. 3, c. 56), s. 9; Revenue (No. 2) Act, 1864 (27 & 28 Vict. c. 56), s. 6; Finance Act, 1908 (8 Edw. 7, c. 16), s. 4. In the case of orange quinine wine made up on the formulæ of the *Vinum Quininæ* of the British Pharmacopœia no objection is offered to its sale without licence if it contains in solution quinine equal to one grain of quinine hydrochloride in every fluid ounce, although if sold as a proprietary medicine it may be liable to patent medicine label duty. For the medicines liable to label duty, see p. 619, *ante.* It is not the practice to interfere with the sale without licence of medicines which are not previously made up or kept ready for sale.

(*b*) Medicines Stamp Act, 1802 (42 Geo. 3, c. 56), s. 8; Customs and Inland Revenue Act, 1875 (38 & 39 Vict. c. 23), s. 8. The rate now in force is 5*s.*

(*c*) Medicines Stamp Act, 1804 (44 Geo. 3, c. 98), Sched. A.

(*d*) Medicines Stamp Act, 1802 (42 Geo. 3, c. 56), s. 9.

(*e*) As to the meaning of "methylated spirit," see note (*b*), p. 639, *ante.*

(*f*) Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 27. The annual rate of licence duty is 10*s.*, and a licence may be obtained by a beginner at a proportionate part of the full rate according to the quarter of the year in which it is taken out (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 17); and see title INTOXICATING LIQUORS, Vol. XVIII., p. 18.

(*g*) Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 27 (4). As to the licences required by such persons, see pp. 651 *et seq.*, *ante*, and pp. 669, 674, 677, 681, 682, *post.*

(*h*) Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 27.

1397. The applicant must make entry with the local officer of customs and excise of the premises and places to be used by him in connection with the storage and sale of the spirits (*i*).

Entry of premises.

1398. A retailer of methylated spirits may not receive or have in his possession at any one time more than 200 gallons of the spirits, and all spirits must have been obtained by him from an authorised methylator or from another retailer (*k*). He may not sell or have in his possession for sale any methylated spirits other than mineralised methylated spirits (*l*), nor any methylated spirits containing any essential oil or other flavouring matter (*m*). He may not sell to or for the use of any one person more than 4 gallons of methylated spirits at a time (*n*); he may not sell the spirits at all between 10 p.m. on Saturday and 8 a.m. on the following Monday (*o*); and he may not sell methylated spirits or methylic alcohol as or for a beverage or mixed with a beverage (*p*).

Prohibited possession and sales.

1399. A retailer is required to keep a stock account in a form prescribed showing his receipts and sales of methylated spirits; and he must on request at all reasonable hours produce his stock of the spirits for examination to an officer of customs and excise (*q*), who is authorised to take samples of any of the spirits upon paying a reasonable price for each sample (*r*).

Stock account and production of stock.

SUB-SECT. 12.—*Motor Spirit Dealers.*

1400. Every person, other than a licensed manufacturer (*s*) of motor spirit, selling motor spirit the product of his own factory,

Who must be licensed.

(*i*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 126.

(*k*) Revenue Act, 1906 (6 Edw. 7, c. 20), s. 1 (5); Stat. R. & O., 1906, p. 161, r. 11 (a). As to authorised methylators, see p. 639, *ante*. Where a retailer is also authorised by the Commissioners of Customs and Excise to use methylated spirits in some art or manufacture, all the spirits, whether for sale or use, must be obtained by him from a licensed methylator, and an official form of requisition, properly filled up, must be used in ordering them (Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 14 (2); Stat. R. & O., 1906, p. 161, r. 14). Where he receives methylated spirits from another retailer, the quantity received at one time must not exceed 4 gallons (Spirits Act, 1880 (43 & 44 Vict. s. 24), s. 126 (1) (e); Stat. R. & O., 1906, p. 161, r. 11 (b)).

(*l*) See p. 640, *ante*. Methylated spirits, other than those authorised by the regulations, if found in the possession of a retailer, are forfeited and a penalty of £50 is incurred (Revenue Act, 1906 (6 Edw. 7, c. 20), s. 2 (2)).

(*m*) Revenue Act, 1906 (6 Edw. 7, c. 20), s. 2 (5); Stat. R. & O., 1906, p. 161, Part III., r. 10. He may, however, with the permission of the Commissioners of Customs and Excise, receive industrial methylated spirits for use in an art or manufacture. Where a retailer is specially authorised by the Commissioners to receive the industrial variety of spirits, the stocks of both kinds must be stored apart and be kept in vessels marked to distinguish the kind of spirits each contains.

(*n*) Revenue Act, 1906 (6 Edw. 7, c. 20), s. 1 (5); Stat. R. & O., 1906, p. 161, r. 11.

(*o*) Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 26.

(*p*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 130 (1) (b); Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 14 (3).

(*q*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 126. In practice, the requirement as to the keeping of a stock account is only insisted upon in special cases.

(*r*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 127.

(*s*) As to manufacturers, see p. 635, *ante*.

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who sells motor spirit in quantities exceeding 1 pint at a time to one person, is required to take out a licence as a dealer in respect of the premises in which he carries on his business (*t*).

The licence.

1401. The licence, whenever taken out, is granted only on payment of the full year's duty of 5*s*., and expires on the 31st May next following the date of issue (*a*).

Entry of premises.

1402. Before obtaining a licence the applicant must make entry with the local officer of customs and excise of every building, room, or place in which the spirit is to be kept or sold (*b*).

Regulations.

1403. The Commissioners of Customs and Excise may make regulations applying to motor spirit dealers under certain provisions of the Finance Act, 1901 (*c*), and may also apply any of the provisions of the Spirits Act, 1880 (*d*), or any Acts amending that Act (*e*).

Unauthorised sales.

1404. A penalty of £50 and forfeiture of the spirit is incurred by anyone guilty of the unauthorised sale of motor spirit (*f*).

SUB-SECT. 13.—*Occasional Licences.*

(i.) *As to Intoxicating Liquors.*

Who may be licensed.

1405. The holder of a publican's licence or beerhouse licence or wine retailer's "on" licence who desires to sell intoxicating liquor at a place apart from his licensed premises may obtain an occasional licence authorising him to do so for a period not exceeding six days in the case of a publican's licence or three days in other cases (*g*).

(*t*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 84 (2); Stat. R. & O., 1910, p. 679, r. 2. As to motor spirit duty, see note (*m*), p. 597, *ante*.

(*a*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 84 (2); Stat. R. & O., 1910, p. 679, r. 3.

(*b*) Stat. R. & O., 1910, p. 679, r. 1. As to excise entry, see p. 610, *ante*.

(*c*) 1 Edw. 7, c. 7, ss. 8, 9, as amended by the Revenue Act, 1903 (3 Edw. 7, c. 46), s. 2. As to these provisions, see note (*g*), p. 635, *ante*.

(*d*) 43 & 44 Vict. c. 24. As to these, see pp. 623 *et seq.*, *ante*.

(*e*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 84 (6). The regulations provide that, except where specially authorised by the Commissioners, a dealer may not receive motor spirit other than spirit upon which the full duty has been paid and which is accompanied by a certificate to that effect. Where a dealer is authorised to receive motor spirit duty free or at the half-duty rate, he is required to enter into a bond in £100 with one surety for the due receipt and distribution of the spirit, and that he will comply with the official requirements. He must requisition such spirit on a proper official form and may receive it only in quantities of not less than 8 gallons at a time. In addition to the stock-book which every dealer is required to keep for the purpose of recording the quantities of all motor spirit received by him, he must keep an account of all the quantities of spirit delivered from his premises duty free or at half the full duty. He must once at least in each calendar month take an account of the stock in his possession and make up and balance the stock-book; and he must allow an officer of customs and excise to have access to the book at any time and give him any facilities and assistance necesary to enable him to take an account of the stock (Stat. R. & O., 1910, p. 679, rr. 12, 14, 17, 18).

(*f*) Finance Act (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 84 (6), applying the Finance Act, 1901 (1 Edw. 7, c. 7), s. 8; Stat. R. & O., 1910, p. 679, r. 1.

(*g*) See title INTOXICATING LIQUORS, Vol. XVIII., pp. 98—101, where

(ii.) *As to Tobacco.*

Licences to tobacco dealers.

1406. An occasional licence for the sale of tobacco at a place and for a period specified in the licence may be granted to any holder of a licence to deal in tobacco (*h*). Such licence requires no justices' consent for its grant, and may not be granted for a period exceeding three days (*i*).

SUB-SECT. 14.—*Passenger Vessels: Sale of Intoxicating Liquors.*

When licence required.

1407. A passenger vessel licence, which may be granted either for a year or for a day only, must be taken out for the sale of intoxicating liquors, for consumption on the vessel, to passengers on board a vessel which is employed for the carriage of passengers and goes from any place in the United Kingdom to any other place in the United Kingdom, or which goes from and returns to the same place in the United Kingdom on the same day (*j*).

To whom licence granted.

1408. No justices' certificate is required for this licence (*k*), which is granted to the master or some other person belonging to the vessel and nominated by the owner for the purpose of holding the licence (*l*).

The licence.

1409. The annual licence, whenever taken out, may be obtained only on payment of the full duty for the year and expires on the 30th September next following the date of issue (*m*).

1410. The unlicensed sale of intoxicating liquors by retail on board a passenger vessel involves a penalty of £50, or treble the amount of the full duty, at the election of the Commissioners (*n*). A penalty of £50 is incurred by the sale of tobacco without a licence (*o*).

the matter is fully dealt with. The rate of duty is 10*s.* per day for the licence to sell spirits, beer, and wine, and 5*s.* per day in the case of an occasional licence to sell beer or wine only (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., F).

(*h*) Revenue (No. 1) Act, 1864 (27 & 28 Vict. c. 18), s. 5. Such licence is granted on the written application of the holder of the tobacco dealer's licence, and it is not the practice to grant a licence in respect of a stall in a market-place on an ordinary market day.

(*i*) The rate of duty payable is 4*d.* per day (Revenue (No. 1) Act, 1864 (27 & 28 Vict. c. 18), Sched. B).

(*j*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 52, Sched. I., D. The duty on the annual licence is £10; the duty on the licence for one day is £2. The licence authorises the sale of tobacco also (*ibid.*, Provisions applicable to Passenger Vessel Licences, 2); and see title INTOXICATING LIQUORS, Vol. XVIII., p. 105.

(*k*) Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 111 (2) (f); and see title INTOXICATING LIQUORS, Vol. XVIII., p. 105.

(*l*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., D. Provisions applicable to Passenger Vessel Licences, 3). As to transfer of the licence on cesser of interest of the licensee in the vessel, or in the event of her sale or loss, see *ibid.*, 4; title INTOXICATING LIQUORS, Vol. XVIII., p. 105.

(*m*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 49 (2).

(*n*) *Ibid.*, s. 50 (3).

(*o*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 26.

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Who must be licensed.

1411. A licence as pawnbroker (*p*) must be taken out annually by every person who keeps a shop for the purchase or sale of goods or chattels or for taking in goods or chattels by way of security for money advanced thereon, and who purchases or takes in goods or chattels and pays or advances thereon any sum of money not exceeding £10 under an agreement or understanding expressed or implied, or to be reasonably inferred from the character of the dealing, that the goods or chattels may be afterwards redeemed or repurchased on any terms (*q*).

Certificate required.

1412. Except in the case of a pawnbroker licensed before the 1st January, 1873 (*r*), or the successor in the business of such a pawnbroker, a licence may not be issued to anyone unless he produces a certificate granted by the district, borough or county council having jurisdiction in the place where the shop is situated, or, in London, by a metropolitan police magistrate or a justice of the peace in the City (*s*).

Penalty for acting as pawnbroker without licence.

1413. Any person who acts as a pawnbroker without having in force the necessary licence is liable to an excise penalty of £50 (*t*).

Term of licence.

1414. A pawnbroker's licence, whenever taken out, is granted only on payment of the full licence duty for the year, and expires on the 31st July next following the date of issue (*a*). It may also expire during the period for which it was granted, if a court before which

(*p*) As to pawnbrokers generally, see title PAWNS AND PLEDGES, Vol. XXII., pp. 248 *et seq.*

(*q*) Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), ss. 5, 6, 37. A separate licence must be taken out in respect of each house, shop, or place in which the business of pawnbroking is carried on (*ibid.*, s. 37).

(*r*) Such a privileged pawnbroker is entitled to open any number of new businesses and to obtain excise licences for the places thus opened without the production of a certificate (*R.* v. *Inland Revenue Commissioners, Ohlson's Case*, [1891] 1 Q. B. 485). If he has ceased for a time to carry on the trade, he may recommence business and obtain an excise licence as before without obtaining a certificate (*R.* v. *Inland Revenue Commissioners, Garland's Case*, [1891] 1 Q. B. 485). But the assignee of a pawnbroker's business established prior to 1873 is not entitled, without the production of a certificate, to obtain an excise licence for a pawnbroker's business established since 1873 which he has acquired (*R.* v. *Inland Revenue Commissioners, Ex parte Silvester*, [1907] 1 K. B. 108); and see title PAWNS AND PLEDGES, Vol. XXII., p. 248.

(*s*) Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), ss. 39, 40; Local Government Act, 1894 (56 & 57 Vict. c. 93), ss. 27, 32. A licence granted upon a forged certificate is void, and any person knowingly using such a certificate is disqualified thereafter from obtaining a pawnbroker's licence (Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), s. 44). A certificate is valid for a year from the date of its issue without reference to the date of the expiration of the excise licence, (*ibid.*, s. 41).

(*t*) Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), s. 37.

(*a*) *Ibid.*, s. 37. The duty is £7 10*s.* (*ibid.*). A transfer of the licence may, during its currency, be made to the executors, wife, child, or assignee of the licensed person, provided that the corresponding certificate, if any, held from the local authority or the justice has been also transferred to the applicant for the transfer (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 21); and, as to the licence, see, further, title PAWNS AND PLEDGES, Vol. XXII., p. 249.

the pawnbroker is convicted on indictment of any fraud in his business, or of receiving stolen goods knowing them to have been stolen, directs that it shall cease to have effect (*b*).

1415. The licence does not authorise the taking in pawn or delivering out of pawn of any gold or silver plate, unless the requisite plate dealer's licence is also held for the same premises (*c*). Pawns of gold or silver plate.

SUB-SECT. 16.—*Plate Dealers.*

1416. Every person who trades in or sells (*d*) any article composed wholly or in part of gold or silver, and wherein the gold is above 2 dwt. or the silver above 5 dwt., every pawnbroker who takes in pawn or delivers out of pawn any such article, and every refiner of gold or silver, must take out a licence as plate dealer in respect of every shop or other place in which he carries on his business (*e*). Who must be licensed.

1417. The licence, whenever taken out, expires on the 5th July next following the date of issue (*f*). It is issued at a higher and a lower rate. The higher rate is in all cases payable by a pawnbroker or a refiner. An ordinary dealer in plate only becomes liable to take out a licence at the higher rate if he sells articles containing 2 oz. or upwards of gold or 30 oz. or upwards of silver (*g*). Duration of licence and rate of duty.

1418. Any person dealing in plate without having in force the necessary licence is liable to a penalty of £50 (*h*). Penalty for dealing without licence.

1419. A licence as a dealer in plate is not necessary to enable any person to trade in or to receive into or deliver out of pawn gold or silver lace, wire, thread, or fringe (*i*), or to sell watch cases By whom licence not required.

(*b*) Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), s. 38. This would not, it is submitted, prevent a fresh excise licence being taken out at once for the same place of business by the person convicted.

(*c*) Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 1. As to plate dealers' licences, see the text, *infra*.

(*d*) That is, as a trader. A single act of selling would not make a licence necessary (*R.* v. *Little* (1758), 1 Burr. 609; *R.* v. *Buckle* (1803), 4 East, 346).

(*e*) Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 1. A foreign merchant desirous of soliciting orders through his agents in this country is allowed by the Commissioners to take out a licence for his place abroad.

(*f*) Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 6.

(*g*) *Ibid.*, s. 1. The lower rate is £2 6*s.* yearly, and the higher £5 15*s.* (*ibid*). Liability to duty at the higher rate is incurred by a dealer who sells as gold an article of more than 2 oz. in weight, although it does not contain 2 oz. of pure gold (*Young* v. *Cook* (1877), 3 Ex. D. 101). Where the quantity of gold or silver in an article is disputed, proof of the quantity rests on the defendant (Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 5). A licence may be obtained by a beginner at a proportionate part of the year's duty (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 18).

(*h*) Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 3. A sale, in order to involve liability to licence duty, need not be a direct sale of the plate. The purchase of an article which on sale is delivered to the purchaser with a coupon or ticket, the possession of a sufficient number of which entitles the holder to a piece of plate, is a transaction involving the seller of the article in liability to take out a plate licence (*Scott & Co.* v. *Solomon*, [1905] 1 K. B. 577).

(*i*) Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 4.

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which have been made by himself (*k*); nor need a licence be taken out by a *bonâ fide* traveller who solicits, receives, or takes orders for his employer who holds a licence to deal in plate (*l*).

Hawkers and pedlars.

1420. A person who in the course of exercising his trade of a hawker, pedlar, or petty chapman (*m*) sells any article containing more than 2 dwt. of gold or 5 dwt. of silver, must take out a hawker's plate licence at the appropriate rate (*n*), but such a licence does not authorise the sale of plate at any shop or permanent place of business.

SUB-SECT. 17.—*Railway Restaurant Cars.*

When licence required.

1421. A licence must be taken out annually by the railway company or other person owning a railway restaurant car upon which intoxicating liquor is supplied by retail to passengers for consumption on the car (*o*).

Duration of licence.

Whenever taken out it is granted only on payment of the full duty for the year (*p*), and expires on the 30th September next following (*q*). No compensation fund charge is payable in respect of the licence (*r*).

Penalty for selling without licence.

1422. The unlicensed sale by retail of intoxicating liquor on a railway restaurant car involves a penalty of £50, or treble the amount of the licence duty, at the election of the Commissioners (*s*).

SUB-SECT. 18.—*Refreshment Houses.*

Who must be licensed.

1423. Every person who keeps a house, room, shop, or other building which is open for purposes of public refreshment, resort, and entertainment at any time between 10 p.m. and 5 a.m., and not being premises licensed for the sale of intoxicating liquor, must take

(*k*) Customs and Inland Revenue Act, 1870 (33 & 34 Vict. c. 32), s. 4.

(*l*) Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 17. A *bonâ fide* traveller must be a person whose substantial occupation is that of travelling from town to town and soliciting orders (*Stuchbery* v. *Spencer* (1886), 55 L. J. (M. C.) 141). The secretary of a watch club who collects subscriptions from members and, by arrangement with a licensed plate dealer, forwards the total amount in return for a watch which one of the members of the club fixed upon by ballot is to receive, is not a *bonâ fide* traveller, and must hold a licence to deal in plate (*Killick* v. *Graham*, *Lintern* v. *Burchell*, [1896] 2 Q. B. 196); nor is a pedlar carrying round watches to sell on behalf of a licensed dealer, and disposing of them at other persons' houses by hire-purchase agreement (*Hepple* v. *Brumby* (1896), 60 J. P. 792).

(*m*) It is immaterial whether he does or does not hold a licence also as a hawker, or a pedlar's certificate (Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 9 (2)). As to hawkers' licences, see pp. 657 *et seq.*, *ante*.

(*n*) Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 1. The scale of duties is the same as for a licence to deal in plate in a shop; see note (*g*), p. 665, *ante*.

(*o*) See title INTOXICATING LIQUORS, Vol. XVIII., p. 106.

(*p*) The yearly rate is £1 (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., E).

(*q*) *Ibid.*, s. 49 (2).

(*r*) Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), ss. 110, 111. As to the compensation fund, see title INTOXICATING LIQUORS, Vol. XVIII., pp. 71 *et seq.*

(*s*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 50 (3).

out yearly a refreshment house licence (*t*), the rate of duty on which depends on the annual value of the premises (*a*).

The licence expires on the 31st March next following the date of issue. If granted between the 31st March and the 1st May in any year it is to be dated as granted on the 1st April (*b*).

Duration of licence.

1424. Every person who keeps a refreshment house without having in force a proper licence is liable to an excise penalty of £20 (*c*).

Penalty for keeping house without a licence.

SUB-SECT. 19.—*Spirit Dealers* (*Wholesale*).

1425. Every person who sells spirits in quantities of not less than 2 gallons or not less than one dozen reputed quart bottles, or who sells spirits in any quantities to a rectifier, a retailer, or another dealer, must hold a wholesale dealer's licence (*d*), which, whenever taken out, expires on the 30th June (*e*).

Who must be licensed.

1426. The licence duty is a fixed rate irrespective of the value of the premises, but it is subject to an abatement where the licence is held in conjunction with a retail spirits licence for the same premises (*f*).

Licence duty.

(*t*) Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27), s. 6; Revenue (No. 2) Act, 1861 (24 & 25 Vict. c. 91), s. 8; and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 60, note (*k*), 92, 93. The keeping open for the supply of food or other refreshments of any kind is sufficient to constitute liability to the licence duty, although no entertainment in the popular meaning of the term is furnished (*Muir* v. *Keay* (1875), L. R. 10 Q. B. 594; *Howes* v. *Inland Revenue Board* (1876), 1 Ex. D. 385, C. A.; *Cooper* v. *Dickenson* (1877), 22nd January; *Kelleway* v. *McDougal* (1880), 45 J. P. 207).

(*a*) Where the premises in respect of which the licence is granted are under the rent or value of £30 a year the rate is 10*s.* 6*d.*; where £30 a year or over, £1 1*s.* (Revenue (No. 2) Act, 1861 (24 & 25 Vict. c. 91), s. 9). A licence at a proportionate part of the year's duty may be obtained by a beginner (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 18); and see title INTOXICATING LIQUORS, Vol. XVIII., p. 18.

(*b*) Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27), s. 11. It may be declared void during its currency on a second conviction of the holder of the offence of refusing to admit the police (Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27), s. 18); and see title INTOXICATING LIQUORS, Vol XVIII., p. 133.

(*c*) Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27), s. 9; Excise Act, 1860 (23 & 24 Vict. c. 113), s. 42; and see title INTOXICATING LIQUORS, Vol. XVIII., p. 92.

(*d*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 102 (2); Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., B, Provisions applicable to Wholesale Dealers' Licences, 1; and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 11, 12, 154. But a licensed distiller or compounder may without further licence sell in wholesale quantities spirits produced in his own distillery or rectifying house, provided the liquor is supplied to the purchaser direct from the premises where it is manufactured; see pp. 639, 642, *ante*.

(*e*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 49 (2); and see title INTOXICATING LIQUORS, Vol. XVIII., p. 20. It may become void during its currency if the holder is convicted of fraud in connection with permits (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 107 (3)).

(*f*) The rate at present in force is £15 15*s.* (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., B). Where the licence is taken out by a person who is also the holder of a licence authorising him to sell spirits by retail,

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Dealing without licence.

1427. Any person who deals wholesale in spirits without having in force the necessary licence is liable to an excise penalty of £100 (*g*).

Business premises.

1428. The business of a wholesale dealer in spirits may not be carried on upon premises communicating otherwise than by an open public street or carriage road with a distillery or a rectifying house (*h*).

Entry of premises and utensils.

1429. The applicant for a licence must make entry with the local officer of customs and excise of every place, room, fixed cask or vessel to be used by him in connection with his business as dealer (*i*). No justices' licence need be held (*k*).

Stock-book.

1430. A licensed dealer must keep a stock-book, in which an account is to be entered of all spirits received or sent out of his dealer's stock (*l*).

Purchases and dealings prohibited.

He may purchase spirits only from a licensed distiller, rectifier, or compounder, or another spirit dealer (*m*), and all spirits received by him must be accompanied by a permit or certificate. He may not receive or have in his possession British spirits at a strength under 20 degrees under proof or between 25 and 43 degrees over proof (*n*); and he must not mix any British wine with any

the duty payable on the wholesale licence is reduced by 50 per cent., provided that the total sum then payable on both licences is not less than the full duty payable on the wholesale dealer's licence alone (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., B, Provisions applicable to Wholesale Dealers' Licences, 4). Where the total licence duty payable amounts to £20 or upwards it may, at the option of the licence-holder, be paid in two equal half-yearly instalments (Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 6). A licence at a proportionate part of the yearly rate may be obtained by a beginner according to the proportion which the period of the year for which the licence will be in force bears to the whole year (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 18, as amended by the Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 8); and see title INTOXICATING LIQUORS, Vol. XVIII., p. 18.

(*g*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 50 (2).

(*h*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 101 (1); and see title INTOXICATING LIQUORS, Vol. XVIII., p. 147. A rectifier may, however, hold a licence as a spirit dealer for his rectifying premises (Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 14 (1); and see p. 641, *ante*). A dealer's licence must be taken out for the sale in wholesale quantities of spirits in bond to be supplied direct to a foreign ship for ship's stores (*Tinwell* v. *Mayhook*, [1904] 2 K. B. 790).

(*i*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 97. As to excise entries, see p. 610, *ante*. It is the practice to issue the licence to foreign merchants who desire to sell through *bonâ fide* travellers in this country. In such a case no entry is required, and the licence is granted for the foreign address.

(*k*) Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 111 (2) (i.); and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 12, 87.

(*l*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 112. These entries must be made on the day on which the spirits are received or sent out (*ibid.*, s. 112 (2)).

(*m*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 102; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., A; and see title INTOXICATING LIQUORS, Vol. XVIII., p. 154. He is also allowed to purchase spirits at a customs or excise sale. As to retail licences, see pp. 669 *et seq.*, *post*.

(*n*) Spirits Act, 1880 (43 & 44 Vict. c. 24), ss. 43 (5), 102; and see titles

spirits except for the sole purpose of colouring or fining the spirits (*o*).

All spirits sent out of the stock of a dealer must be accompanied by a certificate from the official certificate book properly filled up by the dealer with the particulars of the spirits (*p*).

Certificate on delivery.

1431. An officer of customs and excise may at any time enter and examine the entered premises of a wholesale dealer, and may take account of the stock of spirits on the premises. The trader must render the officer any necessary assistance in taking the stock (*q*); and he must keep the certificate-book and the stock-book on the premises and readily accessible to the officer, provide scales, weights, and measures (*r*), and, where spirits are obscured, declare and mark their strength on the outside of the vessels containing them (*s*). Any increase found on stocktaking is forfeited (*t*).

Entry by excise officer.

1432. A licence is not required for the sale of foreign spirits imported, so long as they continue in a duty-free warehouse and are sold in quantities not less than 100 gallons at one time and in the casks in which they were imported (*a*).

Sale of foreign imported spirits.

SUB-SECT. 20.—*Spirit Retailers* (*b*).

(i.) "*On*" *Licences.*

1433. The "on" licence granted to a retailer of spirits authorises

Nature of licence.

FOOD AND DRUGS, Vol. XV., p. 67; INTOXICATING LIQUORS, Vol. XVIII., p. 154.

(*o*) Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 10; Regulations of the Commissioners, dated 8th March, 1912.

(*p*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 105 (5). But this does not apply in the case of a wholesale dealer who holds the additional licence to sell spirits by retail in bottle. He may send out to private individuals spirits in quantities not exceeding 1 gallon at a time without a certificate (*ibid.*); and see title INTOXICATING LIQUORS, Vol. XVIII., p. 154.

(*q*) Spirits Act, 1880 (43 & 44 Vict. c. 24), ss. 141, 142. This applies in the case of a dealer who is also a retailer; and see title INTOXICATING LIQUORS, Vol. XVIII., p. 134.

(*r*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 135; Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 29.

(*s*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 99. Where spirits, such as brandy, rum, or compounds, contain sweetening or other obscuring matter, the strength is not ascertainable by the official hydrometer; and see title INTOXICATING LIQUORS, Vol. XVIII., p. 153.

(*t*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 103. A penalty is also incurred (*M'Intosh Brothers* v. *Inland Revenue Commissioners* (1879), 16 Sc. L. R. 477).

(*a*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 12; Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 17; and see title INTOXICATING LIQUORS, Vol. XVIII., p. 12.

(*b*) In the case of licence duty payable under the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), if the licensed premises are held under a lease made prior to the 29th April, 1910, and the lease contains no covenant (as to such covenants, see title LANDLORD AND TENANT, Vol. XVIII., pp. 573, 574) that the lessee shall obtain any supply of intoxicating liquor from the lessor, the latter is liable, notwithstanding any agreement to the contrary, for so much of the licence duty as is proportionate to any increase in the rent or premium payable in respect of the premises being let as licensed premises (Finance Act, 1912 (2 & 3 Geo. 5, c. 8), s. 2). The licence-holder must pay the duty, and he is then entitled to deduct

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the sale by retail (*c*) for consumption, either on or off the licensed premises, of any intoxicating liquor (*d*). The licence, when granted, expires on the 30th September next following its issue (*e*).

Persons qualified to be licensees.

1434. A licence can only be granted to a person who holds the requisite justices' certificate (*f*), and who is not a person disqualified by law to hold the licence (*g*), and in respect of premises which satisfy the necessary requirements as to annual value (*h*).

Entry of premises by applicant.

1435. The applicant for a licence must make entry with the local officer of customs and excise of the premises to be licensed (*i*). This must be made by the true owner of the business, even when the justices' licence, as in the case of a limited liability company, has been granted in the name of a manager or other person (*k*).

Penalty for retailing without licence.

1436. Any person who sells spirits by retail without having in force the necessary licence is liable to an excise penalty of £50, or of treble the amount of the licence duty, at the election of the Commissioners (*l*).

Rate of duty and reductions.

1437. The full duty which must be paid on the grant of a retailer's licence is one half of the annual value of the premises,

from the rent paid by him to the lessor, or to recover from the lessor, the proportion of the duty payable by the latter (Finance Act, 1912 (2 & 3 Geo. 5, c. 8), s. 2.

(*c*) That is, in the case of spirits, wine, or sweets, in quantities not exceeding 2 gallons or one dozen reputed quart bottles, and in the case of beer or cider, in quantities not exceeding 4½ gallons or two dozen reputed quart bottles, at any one time to one person (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C, Provisions applicable to Retailers' Licences, 1).

(*d*) *Ibid.*, Provisions applicable to Retailers' On-Licences, 1, 2; and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 13, 14.

(*e*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 49 (2).

(*f*) Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 1. If intoxicating liquors are retailed on any premises by a person unknown or unlicensed, the occupier of the premises, being privy or consenting to the sale, is liable for the unlicensed selling (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 11); and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 13, 21 *et seq.*

(*g*) A licence may not be granted to a sheriff's officer or an officer executing the legal process of any court of justice, nor to a person who has been convicted of felony or of certain offences against the Licensing Acts (Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 35); nor to a person who is concerned in the business of a distiller within two miles of the place for which it is proposed to take out the retailer's licence (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 101); and see, further, title INTOXICATING LIQUORS, Vol. XVIII., pp. 54 *et seq.*, 154.

(*h*) The annual value must not be less than an amount which varies from £15 to £50, according to the population of the licensing area (Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), Sched. V.; and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 59 *et seq.*). The premises proposed to be licensed must not communicate otherwise than by an open public street or carriage road with those of a distiller or of a rectifier using a still (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 101); and see title INTOXICATING LIQUORS, Vol. XVIII., p. 147.

(*i*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 97. As to excise entry, see p. 610, *ante*.

(*k*) Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 20. Where a registered company is the owner of the house the justices' licence is granted to the secretary or manager (*R.* v. *Lyon* (1898), 14 T. L. R. 357).

(*l*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 50 (3).

subject to a minimum amount varying with the population of the licensing area (*m*), except in the case of hotels, restaurants, and places of entertainment, for which the licence may be issued at a special reduced rate (*a*), and in the case of premises of an annual value exceeding £500, for which the licence may, at the option of the licence-holder, be granted either on payment of the full duty or on payment of one-third of the annual licence value of the premises, provided that the licence duty so payable is not less than £250 (*b*). The duty, if it amounts to £200 or upwards, may be paid

(*m*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C, scale 3. The minimum duty is fixed as under:—

	£	*s.*	*d.*
In non-urban areas or areas with a population of less than 2,000	5	0	0
In urban areas with 2,000 and less than 5,000	10	0	0
" " 5,000 " 10,000	15	0	0
" " 10,000 " 50,000	20	0	0
" " 50,000 " 100,000	30	0	0
" " 100,000 or above	35	0	0

Where it is shown to the satisfaction of the Commissioners that the place where premises are situated, though within an urban area, is essentially rural, the area may for the purposes of the charge of duty be taken to be non-urban (Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 5).

(*a*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8). A licence may be granted to a *bonâ fide* hotel or restaurant at the special reduced rate, if it is shown to the satisfaction of the Commissioners of Customs and Excise that the receipts from the sale of intoxicating liquors in the preceding year were less in the case of the hotel than one-third and, in the case of the restaurant, than two-fifths of the total receipts from the business of all descriptions carried on by the licence-holder in the premises. The reduced duty payable is taken at the option of the licence-holder as a sum bearing the same proportion to the full duty that the receipts from the sale of intoxicating liquors bear to the total receipts, or a duty of 25 per cent. on the annual licence value of the premises, but subject, in either case, to a minimum of not less than one-thirtieth of the annual value (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 45 (1), (3), (4)). A licence is granted to a seasonal hotel at the rate of £30 where the annual value of the premises does not exceed £100, and at £50 in any other case (*ibid.*, Sched. I., C, Provisions applicable to Retailers' On-Licences, 3). The duty payable on premises adapted to be used and *bonâ fide* used as refreshment rooms at a railway station is not to exceed £50 (*ibid.*, 5). In the case of a theatre of an annual value not exceeding £2,000 the licence duty payable is £20, and for any higher value £50. The same rates are applicable to licences for premises *bonâ fide* used for judicial or public administrative purposes, public gardens, galleries or the like (*ibid.*, 4). Where premises include a music-hall, or similar place of public entertainment, the licence may be granted, at the option of the licence-holder, on payment of a duty of £50, together with such sum as would be payable on the rest of the premises if they were separate from the place of entertainment (*ibid.*, 6). A licence granted for a theatre, music-hall, or similar place of entertainment, or in respect of premises used for judicial or administrative purposes, or as public galleries, gardens, or the like, only authorises the sale of intoxicating liquor while the premises are open and being used for these purposes and to persons *bonâ fide* so using them (*ibid.*, 4). As to theatres generally, see title THEATRES AND OTHER PLACES OF ENTERTAINMENT.

(*b*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C, Provisions applicable to Retailers' On-Licences, 4. The annual value is the assessment to inhabited house duty, if any (see title INHABITED HOUSE DUTY, Vol. XVII., pp. 186 *et seq.*); in other cases the assessment to income

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in two equal instalments at the option of the licence-holder, one at the time of the grant and the other six months thereafter (*c*).

Sale on entered premises at any time.

1438. The holder of the licence may sell intoxicating liquors on the entered premises at any hour of the day or night without taking out a further excise licence (*d*).

Prohibited sales and possession of spirits.

1439. A spirit retailer must not buy or receive spirits except from a licensed distiller, rectifier, or compounder, or a wholesale dealer (*e*); he must not receive, send out, or have in his possession British spirits at a strength under 20 degrees under proof or between 25 and 43 degrees over proof (*f*); and he must not mix British wine with any spirits except for the sole purpose of colouring or fining the spirits (*g*).

Permits.

All spirits received by him must be accompanied by an official

tax is taken (see title INCOME TAX, Vol. XVI., pp. 620 *et seq.*). If neither value is applicable the Commissioners may determine the value by such means as they think fit (Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 8; Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 5). Where a part of the premises occupied by the licence-holder has no internal connection with the portion used for the purposes of the business, the annual value of such part is to be excluded in ascertaining the annual value for the purposes of the charge of licence duty (*Lawrence* v. *Lord Advocate* (1889), 53 J. P. 167; *Kirk* v. *Lord Advocate* (1897), 62 J. P. 22; *Paterson* v. *Lord Advocate* (1906), 8 F. (Ct. of Sess.) 880). The annual licence value is the difference between the value of the premises licensed and the value they would have if unlicensed (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 44 (2)); but in calculating the value of the premises as licensed no regard is to be had to profits derived from sources other than the sale of intoxicating liquors (*Truman, Hanbury, Buxton & Co., Ltd.* v. *Inland Revenue Commissioners*, [1912] 3 K. B. 377, C. A., varying the rule applied in *Ashby's Cobham Brewery Co., Re The Crown, Cobham, Ashby's Staines Brewery Co., Re The Hand and Spear, Woking*, [1906] 2 K. B. 754). A remission of one-seventh of the duty is allowed where the licence is a six-day or early-closing licence, and of two-sevenths where both these conditions apply (Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 60). But this reduction, in the case of a six-day or early-closing licence granted at the minimum duty referred to at p. 671, *ante*, is not allowed if the reduction would operate to make the duty payable less than one-third of the annual licence value of the premises (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 45 (6), as amended by the Finance Act, 1912 (2 & 3 Geo. 5, c. 8), s. 3).

(*c*) Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 6 (1).

(*d*) An occasional licence need not, therefore, be taken out for sale beyond the usual closing hours where a general order of exemption or a special order of exemption under the Licensing (Consolidation) Act, 1910 (see title INTOXICATING LIQUORS, Vol. XVIII., pp. 95—97), has been granted to a licence-holder by the local authority; see *Devine* v. *Keeling* (1886), 34 W. R. 718.

(*e*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 102. He is allowed also to purchase spirits at a public customs or excise sale, and he may receive them from a customs or excise duty-free warehouse under the regulations of the Commissioners.

(*f*) Spirits Act, 1880 (43 & 44 Vict. c. 24), ss. 43 (5), 102 (3); and see titles FOOD AND DRUGS, Vol. XV., p. 67; INTOXICATING LIQUORS, Vol. XVIII., pp. 154, 155. The necessary permits and certificates are preserved and delivered to the officer of customs or excise who next visits the premises of the spirit retailer after their receipt (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 11).

(*g*) Finance Act 1911 (1 & 2 Geo. 5, c. 48), s. 10; Regulations of the Commissioners dated 8th March, 1912.

permit or certificate, and spirits sent out of the stock of a retailer in any quantity exceeding one gallon must be accompanied by a certificate (*h*).

Stock-book.

1440. A spirit retailer is required to supply himself with a stock-book of the official pattern, in which he must enter on the day of receipt or delivery, as the case may be, particulars of all spirits received by him, and of all spirits sent out accompanied by a certificate. The book must be kept on the entered premises at all times, and be accessible to any officer of customs and excise (*i*).

Account taken by excise officer.

An account of the stock of spirits in the possession of a spirit retailer may be taken at any time by an officer of customs and excise (*k*). The licence-holder is required to furnish the necessary weights and measures for this purpose, and to render any assistance demanded of him (*l*). Any increase found on the quantity which, according to the stock-book, ought to be in the possession of the licensee is forfeited, and may be seized (*m*).

When licence not required.

1441. Intoxicating liquors may be sold without licence in a *bonâ fide* registered club to the members of the club for consumption either on or off the premises (*n*); or at a military canteen conducted on the regimental system (*o*). Duly qualified chemists and druggists may sell without a spirit licence *bonâ fide* medicated spirits made from spirits upon which the full duty of customs or excise has been paid (*p*).

(*h*) Spirits Act, 1880 (43 & 44 Vict. c. 24), ss. 105, 111; and see, further, and for the penalty, INTOXICATING LIQUORS, Vol. XVIII., p. 154. A book of official certificates may be obtained on request made in writing to the local officer (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 108).

(*i*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 112. An officer may call upon the licence-holder to enter up these at any time. The book must be preserved for twelve months after it has been filled up (*ibid.*, s. 112 (4)).

(*k*) Spirits Act, 1880 (43 & 44 Vict. c. 24), ss. 103, 141.

(*l*) *Ibid.*, s. 42. Where the strength of any spirits in stock cannot be ascertained by the official hydrometer, the licence-holder is required to mark the strength, as ascertained by distillation, on the cask containing them (*ibid.*, s. 99); and see title INTOXICATING LIQUORS, Vol. XVIII., p. 153.

(*m*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 103. Illicit spirits found in stock are also liable to seizure, as are also spirits obtained by extraction from the wood of empty spirit casks (Finance Act, 1898 (61 & 62 Vict. c. 10), s. 4); and see title INTOXICATING LIQUORS, Vol. XVIII., p. 156. An illegal increase may also be due to the presence of spirits thus extracted (*M'Intosh Brothers* v. *Inland Revenue Commissioners* (1879), 16 Sc. L. R. 477).

(*n*) This supply of liquor is not a sale (*Graff* v. *Evans* (1882), 8 Q. B. D. 373); see title CLUBS, Vol. IV., p, 429. The exemption does not apply to sales in a proprietary club (*Bowyer* v. *Percy Supper Club Co.*, [1893] 2 Q. B. 154).

(*o*) See p. 654, *ante*.

(*p*) Spirits Act, 1742 (16 Geo. 2, c. 8), s. 12; Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 111; and see title INTOXICATING LIQUORS, Vol. XVIII., p. 16. The exemption granted under the Act to a person "who hath served a regular apprenticeship" does not extend to cover one who under an oral agreement has actually served his time as a chemist (*Kirkby* v. *Taylor*, [1910] 1 K. B. 529). It is submitted that this exemption does not extend to cover the sale of medicated preparations made up with wine. It is not the practice to require a licence

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Repayment of duty in respect of unexpired term.

1442. When the justices' licence expires during the currency of a spirit retailer's excise licence, and the determination of the justices' licence was not brought about by a forfeiture on conviction, the licence-holder is entitled to a repayment of such sum as bears to the full amount of the duty the same proportion as the unexpired period of the licence bears to the whole year (*q*). This does not apply to any payment made of a compensation fund charge (*r*).

(ii.) *"Off" Licences.*

Who may obtain licence.

1443. Any person, including the holder of a wholesale spirit dealer's licence not being also a rectifier or compounder (*s*), may obtain a licence to retail spirits for consumption off the premises only (*t*).

Rate of duty.

1444. The rate of licence duty depends on the annual value of the licensed premises, fixed in the same way as in the case of premises for which a beer retailer's on-licence is taken out (*u*).

Entry of premises.

1445. Entry of the premises must be made by the applicant with the local officer of customs and excise (*v*).

Penalty for retailing without licence.

1446. A like penalty is incurred in the case of the sale by retail, without the necessary licence, of spirits for consumption "off" the

to be taken out for the sale by chemists and druggists of small quantities of spirits of wine upon which duty has been paid for purely medical or scientific purposes; and see titles MASTER AND SERVANT, Vol. XX., p. 79; MEDICINE AND PHARMACY, Vol. XX., p. 378.

(*q*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 24, as amended by the Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 7.

(*r*) See title INTOXICATING LIQUORS, Vol. XVIII., pp. 68 *et seq.*; and see *ibid.*, p. 72; *Malkin* v. *R.*, [1906] 2 K. B. 886.

(*s*) Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 89.

(*t*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 51 (1), Sched. I., C.—II.

(*u*) See pp. 651 *et seq.*, *ante*; the rate at present in force is:—

	£	*s.*	*d.*
Where the annual value does not exceed £10 . .	10	0	0
Exceeds £10 but does not exceed £20 . .	11	10	0
,, £20 ,, ,, £30 . .	14	0	0
,, £30 ,, ,, £50 . .	15	0	0
,, £50 ,, ,, £75 . .	16	0	0
,, £75 ,, ,, £100 . .	17	10	0
,, £100 ,, ,, £250 . .	19	0	0
,, £250 ,, ,, £500 . .	30	0	0
,, £500	50	0	0

(Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C, scale 5). An abatement of half the duty payable on the wholesale dealer's licence is allowed in certain cases *ibid.*, B., Provisions applicable to Wholesale Dealers' Licences, 4; and see p. 667, *ante*). Where the total duty is £20 or upwards, it may at the option of the licence-holder be paid in two equal half-yearly instalments (Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 6). A licence at a proportionate part of the year's duty may be obtained by a beginner according to the proportion which the period for which the licence will be in force bears to a whole year (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 17, as amended by the Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 8); and see title INTOXICATING LIQUORS, Vol. XVIII., p. 18.

(*v*) As to excise entry, see p. 610, *ante*. As to the conditions rendering a justices' licence necessary before the excise licence can be obtained, see title INTOXICATING LIQUORS, Vol. XVIII., p. 14; and see *ibid.*, pp. 21 *et seq.*

premises as in the case of such sale for consumption "on" the premises (*a*).

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1447. The licence only authorises the sale of spirits in closed vessels and in quantities not exceeding two gallons or one dozen reputed quart bottles, and not less than one reputed quart bottle (*b*).

The licence.

Whenever taken out it expires, in the case of a licence taken out by the holder of a wholesale dealer's licence, on the 30th June next following the date of issue, and in other cases on the 30th September (*c*).

Term of licence.

SUB-SECT. 21.—*Still Users.*

1448. Every person, not being a licensed distiller, rectifier, or compounder of spirits, vinegar maker, or refiner or manufacturer of motor spirit, who keeps or uses a still or retort, must take out a still licence (*d*), which expires on the 5th July next following the date of issue (*e*).

Who must be licensed.

A penalty of £50 is incurred for failure to take out a still licence where such licence is required (*f*).

Penalty for failure to take out licence.

1449. The premises of the licensee must be open at any hour of the day or night to the inspection of an officer of customs and excise, who may examine any still kept thereon (*g*).

Inspection of premises.

1450. A licence is not required to be taken out for stills used at alkali works for which a certificate of registration granted by the Local Government Board is in force (*h*); and the Commissioners of Customs and Excise may make regulations permitting the use without licence of stills for experiments in chemistry, or in the manufacture of articles other than spirits or spirit mixtures (*i*).

Exempted premises.

(*a*) Finance (1909-10), Act, 1910 (10 Edw. 7, c. 8), s. 50 (3). For the penalty, see p. 670, *ante*.

(*b*) Finance (1909-10) Act, 1910 (10 Edw, 7, c. 8), Sched. I., C, Provisions applicable to Retailers' Licences, General, 1; Provisions applicable to Retailers' Off-Licences, 2. It is not necessary that the sale should be in a reputed quart bottle; see *Fairclough* v. *Roberts* (1890), 24 Q. B. D. 350.

(*c*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 49.

(*d*) Still Licences Act, 1846 (9 & 10 Vict. c. 90), s. 1; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 84 (3). The rate of duty is 10*s*. A licence at a proportionate part of the duty may be obtained by a beginner according to the quarter of the year in which it is taken out (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 17).

(*e*) Still Licences Act, 1846 (9 & 10 Vict. c. 90), s. 2. It may be suspended or revoked by the Commissioners of Customs and Excise during its currency if the holder is convicted of an offence in relation to methylated spirits (Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8), s. 33 (2); see pp. 639 *et seq.*, *ante*). A still found in the possession of an unlicensed person other than a maker of stills is liable to forfeiture (Still Licences Act, 1846 (9 & 10 Vict. c. 90), s. 4).

(*f*) *Ibid.*

(*g*) Revenue (No. 2) Act, 1861 (24 & 25 Vict. c. 91), s. 23.

(*h*) Under the Alkali, etc. Works Regulation Act, 1881 (44 & 45 Vict. c. 37) (*Sidgwick* v. *Sunderland Gas. Co.* (1893), 5th June, unreported); and see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 411 *et seq.*

(*i*) Still Licences Act, 1846 (9 & 10 Vict. c. 90), s. 4. Exemption is allowed in respect of stills used in the distillation of tar or tar products, provided no spirit mixtures are used or produced on the premises and the

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SUB-SECT. 22.—"*Sweets*" *Dealers* (*Wholesale*).

Who must be licensed.

1451. A person who sells "sweets" (*j*) or made wines, mead or metheglin in quantities of or exceeding 2 gallons or one dozen reputed quart bottles at one time to any person must take out a licence as a wholesale dealer in sweets (*k*).

Penalty for dealing without licence.

Any person who deals wholesale in sweets without having in force the licence required for the purpose is liable to an excise penalty of £100 (*l*).

The licence.

1452. The licence is granted at a fixed rate (*m*) irrespective of the value of the premises, and expires on the 30th June next following the date of issue (*n*).

Sales by licensed dealer.

1453. A licensed sweets manufacturer may, without further licence, sell in wholesale quantities at his factory sweets the produce of his factory, or he may by himself or an agent sell such sweets elsewhere if they are supplied direct to the purchaser from the factory (*o*). A licensed wine dealer may also without further licence sell sweets in wholesale quantities (*o*). The holder of a university wine permit may sell sweets without licence (*p*), and so may a free vintner within the local limits of his privilege and provided he makes entry of the premises on which he sells (*q*).

Prohibited mixtures.

1454. A dealer in sweets for sale must not—(1) mix for sale any foreign wine with any British wine; or (2) sell or expose for sale any British wine containing more than 15 per cent. of foreign wine; or

exemption is registered with the local officer of customs and excise; and to professors of chemistry and analytical chemists in respect of stills used by them in the *bonâ fide* exercise of their profession, provided they carry on no trade or business which involves the manufacture from or with spirit of any article for sale. The official right to enter upon and inspect the premises on which the still is allowed to be kept is reserved in these cases (Orders of the Commissioners, made under *ibid.*).

(*j*) The term "sweets" means any liquor made from fruit and sugar or from fruit or sugar mixed with any other material, which has undergone a process of fermentation in the course of manufacture (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 52).

(*k*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., B. The licence does not authorise sale in retail quantities; and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 11, 12.

(*l*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 50 (2).

(*m*) The yearly rate at present in force is £5 5*s*. A licence at a proportionate part of the whole duty may be obtained by a beginner (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 18, as amended by the Finance Act, 1911 (1 & 2 Geo. 5. c. 48), s. 8). Where a licence to retail sweets is also taken out by the dealer for the same premises a reduction of 50 per cent. is allowed in the amount payable on the wholesale licence, provided that the sum payable on both is not less than the total amount payable on the wholesale dealer's alone (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., B, Provisions applicable to Wholesale Dealers' Licences, 4).

(*n*) *Ibid.*, s. 49. No excise entry is required to be made of a wholesale sweets dealer's premises.

(*o*) *Ibid.*, Sched. I., B, Provisions applicable to Wholesale Dealers' Licences, 2, 3.

(*p*) *Roberts* v. *Twining* (1909), 101 L. T. 41.

(*q*) Revenue Act, 1862 (25 & 26 Vict. c. 22), s. 16; and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 9, 10.

(3) sell or expose for sale any British wine to which spirits have been added for any other purpose than to fortify the wine (*r*).

SUB-SECT. 23.—"*Sweets*" *Retailers.*

(i.) "*On*" *Licences.*

1455. A sweets retailer's on-licence is granted at a rate depending on the annual value of the licensed premises, and authorises sales for consumption either on or off the premises in any quantity less than 2 gallons or one dozen reputed quarts at any one time to one person (*s*). Nature of licence.

The applicant must hold a justices' licence (*t*).

The licence expires on the 30th September next following the date of issue (*u*).

1456. Any person who sells sweets by retail without having in force the necessary licence is liable to an excise penalty of £50, or treble the amount of duty, at the election of the Commissioners (*a*). Penalty for retailing without licence.

1457. The holder of a spirit retailer's or wine retailer's on-licence may without further licence sell sweets by retail for consumption either on or off the premises (*b*). Sales permitted under licence.

1458. A sweets retailer is subject to the same restrictions as to mixing and selling British and foreign wines as a sweets dealer (*c*). Restrictions on mixing.

(ii.) "*Off*" *Licences.*

1459. A sweets retailer's off-licence authorises the sale by retail for consumption off the premises only of sweets or made wines (*d*), Nature of licence.

(*r*) Regulations of the Commissioners dated 8th March, 1912, made under the Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 10.

(*s*) The rate at present in force is :—

	£	*s.*	*d.*
For premises of an annual value under £30 . .	2	5	0
£30 and under £50	3	0	0
£50 ,, £100	4	10	0
£100 and over	6	0	0

(Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I. C, I., applying half the duties specified in *ibid.*, scale 4; and see *ibid.*, Provisions applicable to Retailers' Licences, General, 1, Provisions applicable to Retailers' On Licences, 1; and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 13, 14). An abatement is allowed from these rates of one-seventh in the case of a six-day or early closing licence, and of two-sevenths in the case of a six-day and early-closing licence (Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 60); and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 91, 92. A beginner may obtain a licence at a proportionate part of the year's duty according to the proportion which the period for which the licence will be in force bears to a whole year (Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 8).

(*t*) Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), ss. 1, 110.

(*u*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 49 (2).

(*a*) *Ibid.*, s. 50 (3).

(*b*) *Ibid.*, Sched. I., C, Provisions applicable to Retailers' Licences, 1, 4; and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 13, 14.

(*c*) Regulations of the Commissioners, dated the 8th March, 1912; see p. 676, *ante.*

(*d*) For the definition of "sweets" see note (*j*), p. 676, *ante.* Duly

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mead or metheglin (*e*). The applicant for a licence must be the holder of a justices' licence to sell sweets by retail (*f*).

Penalty for selling without licence.

1460. The unlicensed sale of sweets for consumption off the premises involves an excise penalty of £50 or treble the amount of the full duty, at the election of the Commissioners (*g*).

Duty and term of licence.

1461. The licence duty is a fixed sum irrespective of the value of the premises (*h*), and the licence expires on the 30th September annually, except when it is held in combination with a wholesale sweets dealer's licence for the same premises, in which case both licences expire on the 30th June (*i*).

Sales under other licences.

1462. A spirit retailer's on-licence and a wine retailer's on-licence or off-licence authorise also the sale of sweets by retail for consumption off the premises (*k*).

SUB-SECT. 24.—*Tobacco Sellers.*

Who must be licensed.

1463. A dealer in tobacco (*l*) or snuff must take out an annual licence at the current rate for the premises in which he sells tobacco (*m*).

The licence.

1464. The licence may be taken out in respect of a shop or other place of business, and for a railway carriage, tramway car, or

qualified chemists and druggists are allowed by the Commissioners to sell, without either a sweets or a wine licence, orange quinine wine and other medicinal preparations which are prepared according to the directions of the British Pharmacopœia, if the bottles are labelled to show from the dose that the preparation is to be used as a medicine and not as a beverage; and see title INTOXICATING LIQUORS, Vol. XVIII., p. 16. As to the exemptions of free vintners and holders of university wine permits, see p. 676, *ante*.

(*e*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C, Provisions applicable to Retailers' Off-Licences, 1.

(*f*) Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 1. As to the grant of justices' licences, see title INTOXICATING LIQUORS, Vol. XVIII., pp. 21 *et seq.*

(*g*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 50 (3).

(*h*) The present annual rate is £2 (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C). A licence may be obtained by a beginner at a proportionate part of the whole rate according to the proportion which the period for which the licence will be in force bears to a whole year (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 18, as amended by the Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 8).

(*i*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 49 (2).

(*k*) *Ibid.*, Sched. I., C, Provisions applicable to Retailers' Licences, General, 4; Provisions applicable to Retailers' On-Licences, 1. As to the exemptions of free vintners and holders of university wine permits, see p. 676, *ante*.

(*l*) As to customs duties on tobacco, see p. 607, *ante*. As to excise duties on home-grown tobacco, see p. 626, *ante*. As to licences to tobacco manufacturers, see p. 645, *ante*.

(*m*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 2; Excise Act, 1840 (3 & 4 Vict. c. 17), s. 1. The present rate is 5*s.* 3*d.* A licence at a proportionate part of the year's duty may be obtained by a beginner, except where the licence is for a railway carriage, tramway car, or omnibus, when the full duty must be paid irrespective of the date when it is taken out (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 18; Revenue Act, 1884 (47 & 48 Vict. c. 62), s. 12 (3); Finance Act, 1897 (60 & 61 Vict. c. 24), s. 6 (1)).

omnibus, or for automatic machines set up at railway stations or other places (*n*); but no one may hawk tobacco (*o*).

The licence authorises the sale in any quantities of manufactured tobacco or of snuff upon which the full duties of customs or excise have been paid (*p*).

The licence expires on the 5th July annually, except where it is held for premises licensed for the sale by retail of intoxicating liquors, in which case it expires on the date of expiration of the liquor licence (*q*).

Penalty for selling without licence.

1465. Any person who sells tobacco or snuff without having in force the necessary licence is liable to a penalty of £50 (*r*).

Entry of premises.

1466. No excise entry of a tobacco dealer's premises is required, except in the case of a manufacturer who deals in tobacco in premises adjoining his manufactory, where the premises used for dealing must be entered with the factory (*s*).

Powers of excise officer.

1467. An officer of customs and excise may go upon the premises of a tobacco dealer at any time and take samples of the stock on payment for them at the wholesale market rate (*a*); and he may seize any prohibited materials, adulterants or smuggled goods in the possession of the dealer (*b*).

(*n*) Revenue Act, 1884 (47 & 48 Vict. c. 62), s. 12; Finance Act, 1897 (60 & 61 Vict. c. 24), s. 6. Where a person takes out a tobacco dealer's licence for automatic machines at a railway station or other public place, this is regarded as covering any number of machines he may erect at that place; but more than one person may hold licences for such machines at the same public place.

(*o*) Tobacco Act, 1842 (5 & 6 Vict. c. 93), s. 13. A person found hawking may be arrested by any officer of customs and excise (*ibid.*); and see title MARKETS AND FAIRS, Vol. XX., p. 56, note (*k*).

(*p*) A dealer may not, however, sell or expose for sale sweetened tobacco which is not enclosed in excise labels (Manufactured Tobacco Act, 1863 (26 & 27 Vict. c. 7), s. 6). Labels must be obliterated by the vendor (*ibid.*, s. 8); and, as to such labels, see p. 619, *ante*.

(*q*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 16; Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 23. Retail licences for the sale of intoxicating liquors expire on the 30th September annually, except when held in conjunction with a wholesale dealer's licence for the sale of the same liquor, when they expire on the 30th June; see title INTOXICATING LIQUORS, Vol. XVIII., p. 20.

(*r*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 26.

(*s*) Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 8; as to such entry, see the provisions relating to manufacturers, p. 645, *ante*.

(*a*) Tobacco Act, 1840 (3 & 4 Vict. c. 18), s. 3; Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 10. If on analysis of a sample thus taken it is found to be in any manner adulterated, a penalty of £200 is incurred; or, if it is found to contain more than 32 per cent. of moisture or a greater proportion of oil than 4 per cent., a penalty of £50 is incurred and the goods are forfeited (Tobacco Act, 1842 (5 & 6 Vict. c. 93), s. 3; Customs and Inland Revenue Act, 1879 (42 & 43 Vict. c. 21), s. 27; Customs and Inland Revenue Act, 1887 (50 & 51 Vict. c. 15), s. 4; Finance Act, 1904 (4 Edw. 7, c. 7), s. 3; Oil in Tobacco Act, 1900 (63 & 64 Vict. c. 35), s. 1). A dealer is liable to the penalty for having adulterated tobacco in his possession even where he was not aware of the adulteration (*R.* v. *Woodrow* (1846), 15 M. & W. 404).

(*b*) Tobacco Act, 1842 (5 & 6 Vict. c. 93), ss. 4, 5. On a charge of having prohibited materials in his possession, it is not necessary to prove

SECT. 3. Licences to Carry on Trade or Business.

Sales of tobacco not requiring licence.

1468. A tobacco manufacturer (*c*) is not required to take out a dealer's licence in respect of the sale by him at his entered premises of tobacco produced at his factory (*d*). The holder of a passenger vessel licence (*e*) may also, without further licence, sell tobacco on the vessel to the persons to whom, under his licence, he is entitled to sell intoxicating liquors (*f*); and no licence is required for the sale in a duty-free warehouse of imported tobacco, provided that the quantity sold at one time is not less than an entire package of the tobacco as imported (*g*).

SUB-SECT. 25.—*Wine Dealers* (*Wholesale*).

Who must be licensed.

1469. Every person who sells foreign wine (*h*) in any quantity not less than 2 gallons or one dozen reputed quart bottles at any one time to one person must take out a wholesale wine dealer's licence for his premises (*i*).

The licence.

The licence, for which no justices' licence need be held (*k*), authorises the sale also of British wines, sweets, mead or metheglin in wholesale quantities for consumption off the premises. It is granted at a fixed sum irrespective of the value of the premises (*l*), and expires on the 30th June annually (*m*).

against the dealer that he intended to mix them with the tobacco (*Lockwood* v. *A.-G.* (1842), 10 M. & W. 464, Ex. Ch.).

(*c*) As to tobacco manufacturers, see pp. 645 *et seq.*, *ante*.

(*d*) See p. 647, *ante*. There is no corresponding privilege of selling home-grown tobacco grown or cured by himself given expressly by law to a licensed grower or curer; but it is submitted that this would not prevent the Commissioners granting such a privilege by regulation: see Stat. R. & O., 1911, p. 427, r. 6.

(*e*) As to such licences, see p. 663, *ante*.

(*f*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., D, Provisions applicable to Passenger Vessel Licences, 2; and see title INTOXICATING LIQUORS, Vol. XVIII., p. 105.

(*g*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 12; and, as to imported tobacco, see p. 607, *ante*.

(*h*) As to the meaning of "wine," and as to the articles comprised under the term "sweets," see title INTOXICATING LIQUORS, Vol. XVIII., p. 7. Any liquor sold or offered for sale as foreign wine, or under a name by which any foreign wine is generally known, is held as against the seller to be foreign wine (Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27), s. 21; *Richards* v. *Banks* (1887), 58 L. T. 634). Any fermented liquor containing more than 40 per cent. of proof spirit is taken to be spirits (Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27), s. 21).

(*i*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., B, Provisions applicable to Wholesale Dealers' Licences, 1; and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 11, 12. Where a foreigner has no office or place of residence within this country, a wholesale dealer's licence is issued to him for his address abroad. This licence authorises him to solicit, take, or receive orders for the sale of wine through *bonâ fide* travellers in England.

(*k*) Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 111.

(*l*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., B, Provisions applicable to Wholesale Dealers' Licences, 3. The rate at present in force is £10 10*s*; but if the holder of the licence also holds a licence to retail wine, the duty payable on the dealer's licence may be reduced by 50 per cent., provided that the total sum payable on both is not less than £10 10*s*. (*ibid.*, 4). A beginner may obtain a licence at a proportionate part of the whole year's duty, according to the part of the year still to run (Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 8).

(*m*) Finance (1909-10) Act, 1910 (10 Edw. 7 c. 8), s. 49 (2).

SECT. 3. Licences to Carry on Trade or Business.

1470. Any person who deals in foreign wine without having in force the necessary licence is liable to an excise penalty of £100 (*n*). Penalty for selling without licence.

1471. The applicant is not required to make entry of his place of business with the excise authorities, unless he also sells spirits on the same premises or on premises not more than 500 yards distant (*o*). When entry required.

1472. A wine dealer must not mix for sale any foreign wine with any British wine, or sell or offer for sale any British wine which contains more than 15 per cent. of foreign wine, or sell or offer for sale any British wine to which spirits have been added for any other purpose than to fortify it (*p*). Prohibition against mixing.

1473. A licence is not required for the sale of foreign wine in bond in quantities of not less than 100 gallons at one time to the same person and in the casks in which imported (*q*). A free vintner of the city of London may also sell wine in wholesale quantities without taking out an excise licence (*r*). Nor need an excise licence be taken out by a person holding a licence to sell wine granted by the corporation of the city of Oxford as representing the chancellor or vice-chancellor of the University of Oxford (*s*), or a licence granted by the chancellor, masters, and scholars of the University of Cambridge, or a licence granted by the mayor or burgesses of the borough of St. Albans (*t*). When licence not required.

SUB-SECT. 26.—*Wine Retailers.*

(i.) "*On*" *Licences.*

1474. Every person other than the holder of a spirit retailer's on-licence who wishes to retail wine for consumption either on or off the premises must take out a wine retailer's on-licence (*u*). Who must be licensed.

The applicant must hold a justices' licence (*v*), and must have made entry with the local officer of customs and excise of the premises for which the licence is to be issued (*a*). He must also be a person who is not disqualified to hold a wine licence (*b*). Qualifications.

(*n*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 50 (2).

(*o*) Excise Act, 1835 (5 & 6 Will. 4, c. 39), ss. 3, 4.

(*p*) Regulations of the Commissioners dated 8th March, 1912.

(*q*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 12; Revenue Act, 1867 (30 & 31 Vict. c. 90), s. 17.

(*r*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 30; *Wells* v. *Attenborough* (1871), 24 L. T. 312. The right to sell wine without licence is confined to vintners who have obtained their positions by patrimony or servitude, and is limited to London and the other towns defined in the charter of the Vinters' Company; and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 9, 10. A vintner may sell only at one set of premises, of which he is required to make entry with the local officer of customs and excise (Revenue Act, 1862 (25 & 26 Vict. c. 22), s. 16).

(*s*) See Oxford Corporation Act, 1890 (53 & 54 Vict. c. ccxxiii.), s. 119.

(*t*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 30.

(*u*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 43, and Sched. C. The licence also authorises the sale of sweets or made wines in retail quantities (*ibid.*, Provisions applicable to Retailers' Licences, 4); and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 13, 14.

(*v*) Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 1. As to justices' licences, see title INTOXICATING LIQUORS, Vol. XVIII., pp. 21 *et seq.*

(*a*) Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27), s. 23. As to excise entry, see p. 610, *ante*.

(*b*) A person who has been convicted of felony or of selling spirits without

SECT. 3. Licences to Carry on Trade or Business.

The duty and the licence.

1475. The rate of duty chargeable depends upon the annual value of the licensed premises (*c*).

The licence expires on the 30th September next following the date of issue, except when held by the holder of a wholesale dealer's licence, when it expires on the 30th June (*d*).

Penalty for retailing without licence.

1476. A penalty of £50, or treble the full licence duty, at the election of the Commissioners, is incurred by anyone selling wine by retail without the necessary licence (*e*).

Mixed wines.

1477. A wine retailer is under the same restrictions as to mixing foreign with British wine and as to selling wines so mixed as a wine dealer (*f*).

When licence not required.

1478. A licence need not be taken out by a freeman of the Free Vintners' Company of the City of London for the sale of wine in one set of premises of which he has made entry with the proper officer of customs and excise, and which is within the area to which the company's charter extends (*g*).

(ii.) *"Off" Licences.*

Who must be licensed.

1479. Every person (*h*) desirous of selling wine by retail for consumption off the premises only must take out a licence, the

a licence is disqualified to hold a licence to sell wine by retail (Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27), s. 22); and for a list of persons disqualified to hold a licence to retail intoxicating liquors generally, see note (*g*), p. 670, *ante;* and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 54 *et seq.* A licence granted to a disqualified person is void (*R.* v. *Vine* (1875), L. R. 10 Q. B. 195).

(*c*) The scale at present in force is:—

	£	*s.*	*d.*
Where the annual value of the premises is under £30 .	4	10	0
£30 and under £50	6	0	0
£50 ,, £100	9	0	0
£100 and over	12	0	0

(Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C, scale 4). This duty is subject to a deduction of one-seventh in the case of a six-day or early-closing licence, and of two-sevenths in the case of a six-day and early-closing licence (Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 60); see title INTOXICATING LIQUORS, Vol. XVIII., pp. 91, 92. A licence may be obtained by a beginner at a proportionate part of the year's duty (Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 8).

(*d*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 49 (2).

(*e*) *Ibid.*, s. 50 (3).

(*f*) Regulations of the Commissioners dated 8th March, 1912; and see the text, *supra.*

(*g*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 3; Revenue Act, 1862 (25 & 26 Vict. c. 22), s. 16. He is required to have obtained his freedom by patrimony or servitude; and see, further, title INTOXICATING LIQUORS, Vol. XVIII., pp. 9, 10. Duly qualified chemists and druggists are allowed, under the regulations of the Commissioners, to sell without licence *bonâ fide* medicated wines recognised by the British Pharmacopœia; and see *ibid.*, p. 16.

(*h*) The holder of a publican's licence and the holder of a wine-retailer's on-licence may sell without further licence wine by retail for consumption off the premises (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C, Provisions applicable to Retailers' On-Licences, 1, 2); and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 13, 14.

duty upon which depends upon the annual value of the premises to be licensed (*i*).

The applicant must hold a justices' licence (*k*) and make entry with the local officer of customs and excise of the places in which he intends to sell or store the liquors to be retailed (*l*).

Qualifications of applicant.

1480. The licence, whenever taken out, expires on the 30th September next following, except when held by the holder of a wholesale dealer's wine licence, when it expires on the 30th June (*m*).

The licence.

It authorises the sale of sweets or made wines as well as foreign wine (*n*). Foreign wine may not be sold in open vessels or in any quantity less than one reputed pint bottle (*o*). Neither foreign wine nor sweets may be sold in quantities of 2 gallons or one dozen reputed quarts or upwards at any one time to one person (*p*).

Sales authorised.

1481. Any person who sells wine by retail for consumption off the premises, without having in force the necessary licence, is liable to an excise penalty of £50, or to treble the licence duty, at the election of the Commissioners (*q*).

Penalty for selling without licence.

1482. A free vintner may sell wine by retail for consumption off the premises without taking out a licence (*r*).

When licence not required.

(*i*) The rate at present in force is :—

	£	*s.*	*d.*
For premises of an annual value not exceeding £20 .	2	10	0
Exceeding £20 but not exceeding £30 . .	3	0	0
,, £30 ,, ,, £50 . .	3	10	0
,, £50 ,, ,, £75 . .	4	0	0
,, £75 ,, ,, £100 . .	4	10	0
,, £100 ,, ,, £250 . .	5	0	0
,, £250 ,, ,, £500 . .	7	0	0
,, £500	10	0	0

(Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C, scale 7). When held in conjunction with a wholesale wine-dealer's licence a reduction may be allowed in the whole duty payable on both ; see note (*l*), p. 680, *ante*. A licence at a proportionate part of the year's duty may be granted to a beginner (Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 18, as amended by the Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 8); and see title INTOXICATING LIQUORS, Vol. XVIII., p. 18.

(*k*) Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 1. As to justices' licences, see title INTOXICATING LIQUORS, Vol. XVIII., pp. 21 *et seq.*

(*l*) Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27), s. 23. As to excise entry, see p. 610, *ante*.

(*m*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 49; and see title INTOXICATING LIQUORS, Vol. XVIII., p. 20.

(*n*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C, Provisions applicable to Retailers' Licences, General, 4; and as to the meaning of the terms "sweets," "wine," and "foreign wine," see title INTOXICATING LIQUORS, Vol. XVIII., p. 7.

(*o*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. I., C, Provisions applicable to Retailers' Off-Licences, 3.

(*p*) *Ibid.*, Provisions applicable to Retailers' Licences, 1; and see title INTOXICATING LIQUORS, Vol. XVIII., p. 15.

(*q*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 50 (3).

(*r*) Excise Licences Act, 1825 (6 Geo. 4, c. 81), s. 30. As to the conditions under which he may sell, see note (*r*), p. 681, *ante*; and see title INTOXICATING LIQUORS, Vol. XVIII., pp. 9, 10.

SECT. 4. Local Taxation Licences.

SECT. 4.—*Local Taxation Licences.*

SUB-SECT. 1.—*In General* (*s*).

Transfer of powers to county councils.

1483. The duties on licences to deal in game (*t*), to kill game (*a*), and for dogs (*b*), guns (*c*), carriages (including motor cars) (*d*), armorial bearings (*e*), and male servants (*f*) are levied by the county councils throughout England and Wales (*g*). For this purpose each county council and its officers have had transferred to them within their county the powers, duties, and liabilities of the Commissioners of Inland Revenue and their officers, with the exception of the special privileges of the Crown as regards legal proceedings (*h*), the power to prescribe forms of licence or exemption (*i*), the issuing of licences (*k*), and the summary powers of distraint or commitment for duties in arrear (*l*).

Administrative powers of county council.

1484. The council alone has power to institute legal proceedings for any offence in relation to the licences (*m*); and it may remit or mitigate fines, or stay legal proceedings (*n*). It can delegate to such of its officers as it may select the powers of officers of Inland Revenue to call for the production of licences, to inspect books, and to conduct proceedings in court (*o*). The council also grants exemptions from dog licence duty to persons entitled to claim

(*s*) As to financial relations between the Exchequer and county councils, see title LOCAL GOVERNMENT, Vol. XIX., pp. 350, 351.

(*t*) See p. 656, *ante*.

(*a*) See p. 694, *post*.

(*b*) See p. 686, *post*.

(*c*) See p. 695, *post*.

(*d*) See p. 689, *post*.

(*e*) See p. 688, *post*.

(*f*) See p. 692, *post*.

(*g*) The transfer to the councils took place by Order in Council dated 19th October, 1908 (Stat. R. & O., 1908, p. 470), made under the Finance Act, 1908 (8 Edw. 7, c. 16), s. 6.

(*h*) Order in Council, clause I.; Finance Act, 1908 (8 Edw. 7, c. 16), s. 6 (2), applying the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 20 (4) (iii.). As to such legal proceedings, see pp. 737 *et seq.*, *post*.

(*i*) Order in Council, clause II. The forms in use at the date of the transfer are to be continued until the Treasury shall prescribe some other. As to such forms, see p. 627, *ante*.

(*k*) See p. 545, *ante*.

(*l*) Order in Council, clauses IV., XV. The summary powers are those conferred on the Commissioners by the Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 30; see p. 737, *post*. The licences are issued at money order post offices.

(*m*) Order in Council, clause I. But the police have also power to sue for penalties for offences against the Acts requiring licences to be taken out for dogs (Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 23); and see title ANIMALS, Vol. I., pp. 403, 404; POLICE, Vol. XXII., p. 477.

(*n*) Order in Council, clause I., embodying the Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 35 (1).

(*o*) Order in Council, clause IX. These are the powers conferred on officers of Inland Revenue by the Game Licences Act, 1860 (23 & 24 Vict. c. 90), s. 10; the Dog Licences Act, 1867 (30 & 31 Vict. c. 5), s. 9; the Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 33; the Gun Licence Act, 1870 (33 & 34 Vict. c. 57), s. 9; the Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 22; and the Pistols Act, 1903 (3 Edw. 7, c. 18), s. 3.

them; and may make such administrative arrangements generally for the exercise of its powers as it may think fit (*p*).

Duties of county council.

1485. The council must repay (*q*) or make any allowances due in respect of licence duty paid under the Revenue Act, 1869, s. 23 (*r*), and must make returns annually to the Local Government Board of all repayments made and penalties received by the council (*s*). The council must also keep the statutory registers of licences (*t*), and issue the periodical forms and notices required to be sent out in connection with the licences (*a*).

Establishment licences.

1486. The licences taken out in respect of armorial bearings (*b*), carriages (including motor cars) (*c*), and male servants (*d*) are known as establishment licences.

Declaration by person liable to duty.

Every person liable to pay establishment licence duty must, within twenty-one days from the date on which he first became liable, fill up an official form of declaration setting forth the particulars of his liability and deliver it at one of the offices authorised to issue the licences which he is liable to take out (*e*).

The licences.

1487. The licences are obtainable at the money order post offices authorised by the Postmaster-General to grant them (*f*).

Production.

The holder of an establishment licence is required, within a reasonable time after demand, to produce to an authorised officer of the county council the licence held by him, and to allow the officer to read and examine it (*g*).

Transfer

An establishment licence may during its currency be transferred

(*p*) Order in Council, clause XIII. As to such exemptions, see title ANIMALS, Vol. I., p. 404; and see p. 687, *post*.

(*q*) Order in Council, clause VI. As to repayments of licence duty generally, see p. 629, *ante*.

(*r*) 32 & 33 Vict. c. 14.

(*s*) Order in Council, clause VII.

(*t*) *Ibid.*, clause XIV. These are required to be kept under the Game Licences Act, 1860 (23 & 24 Vict. c. 90), s. 15; the Dog Licences Act, 1867 (30 & 31 Vict. c. 5), s. 6; and the Gun Licence Act, 1870 (33 & 34 Vict. c. 57), s. 6.

(*a*) Order in Council, clause XVI.

(*b*) See p. 688, *post*.

(*c*) See p. 689, *post*.

(*d*) Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 18; Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4; Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), s. 8; Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 12; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 86. As to licences in respect of male servants, see p. 692, *post*.

(*e*) Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 27. Where a licence is already held and liability continues, the declaration must be made and the licence taken out before the end of January of the year following that for which the licence was taken out. It is not necessary that the liability should continue for the period of twenty-one days (*Spencer* v. *Sheerman* (1871), 23 L. T. 873; compare *R.* v. *Caird* (1867), 5 Macph. (Ct. of Sess.) 288; *Speak* v. *Powell* (1873), L. R. 9 Exch. 25; *Whitham* v. *Morris* (1905), 93 L. T. 813). One declaration only need be filled up by a person having more than one establishment (*A.-G.* v. *McLean* (1863), 1 H. & C. 750).

(*f*) Finance Act, 1908 (8 Edw. 7, c. 16), s. 6; and Order in Council dated 19th October, 1908 (Stat. R. & O., 1908, p. 470, clause IV.).

(*g*) Revenue Act, 1869 (32 & 33 Vict. c. 14); Order in Council, clause X.

SECT. 4. Local Taxation Licences.

to the widow, or to the executors or administrators, or to the assignees in bankruptcy of the person licensed (*h*).

Persons exempt.

1488. The following persons are exempt from liability to make any declaration or to take out establishment licences, namely:—(1) members of the Royal Family (*i*); (2) every representative Irish peer (*k*) or Irish member of Parliament who is ordinarily resident in Ireland and who does not reside in Great Britain except during the session of Parliament and for forty days before and forty days after the session; and (3) persons ordinarily resident in Ireland, and residing in Great Britain by order of the Lord-Lieutenant for the purpose of public business (*l*). The sheriff of any county, or mayor or other officer of any corporation or Royal burgh, is exempt from liability to take out an establishment licence in respect of any servants or carriages kept by him for the purposes of his office during his year of service (*m*).

Repayments.

1489. When licence duty at a higher rate becomes due and is paid in respect of any carriage or armorial bearings by any person who holds a licence, the duty paid on the licence held is repaid to him (*n*).

SUB-SECT. 2.—*Dogs.*

Annual dog licence.

1490. Every person who keeps (*o*) a dog of the age of six months or upwards (*p*) is required to take out a dog licence annually (*q*). The licence whenever taken out (*r*) is granted only on payment of the full year's duty, namely, 7*s.* 6*d.* for each dog, and expires on the 31st December of the year of issue (*s*). It is personal to the person in whose name it is granted; is not transferable (*t*), and

(*h*) Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 26.

(*i*) But male servants employed by the committee of a club which is subsidised by the Government are not in the service of the Crown so as to make it unnecessary for licence duty to be paid in respect of them (*London County Council* v. *Houndle* (1911), 105 L. T. 211).

(*k*) As to these peers, see title PARLIAMENT, Vol. XXI., pp. 626, 627.

(*l*) Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 19 (2). Such peer or Irish member of Parliament or person ordinarily resident in Ireland is not, however, exempt in respect of any subject-matter of duty employed, kept, or used by him in Great Britain during his residence in Ireland.

(*m*) *Ibid.*, s. 19 (1), (2). The sheriff or mayor is not exempt from liability to furnish the declaration containing particulars of the carriages or servants kept or used by him during his year of office (*ibid.*, ss. 19 (1), 20).

(*n*) *Ibid.*, s. 23. This applies to the licences to be taken out on motor cars under the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), as to which see note (*l*), p. 690, *post*.

(*o*) As to the person who is deemed to be the keeper of the dog, see title ANIMALS, Vol. I., pp. 403, 404.

(*p*) As to burden of proof of age of the dog, see title ANIMALS, Vol. I., p. 404. As to proceedings, see title GAME, Vol. XV., p. 254.

(*q*) Dog Licences Act, 1867 (30 & 31 Vict. c. 5), ss. 3, 10; Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 17. As to the register of licences, see title GAME, Vol. XV., p. 254.

(*r*) It takes effect only from the hour and minute of the day on which it was taken out (*Campbell* v. *Strangeways* (1877), 47 L. J. (M. C.) 6); and see titles ANIMALS, Vol. I., pp. 403, 404; GAME, Vol. XV., pp. 253, 254.

(*s*) Dog Licences Act, 1867 (30 & 31 Vict. c. 5), ss. 4, 5.

(*t*) It is the practice to allow a transfer of the licence granted to the master of a pack of hounds in respect of the pack to his successor in the mastership.

entitles the licensee to keep any dog or any number of dogs not more than the number specified in the licence at any time during its currency (*a*).

Production of licence.

The holder of a licence is required to produce it when requested to be read and examined by an officer of the county council of the county within which he keeps the dog (*b*).

Exemptions: (i.) absolute;

1491. A dog licence need not be taken out by a blind person in respect of a dog kept and used solely by such person for his or her guidance (*c*), nor by the master of a duly licensed pack of hounds for whelps under the age of twelve months and never entered or used with the pack (*d*).

(ii.) on certificate.

Exemption from dog licence duty may also be obtained for not more than two dogs by a farmer keeping them solely for tending sheep or cattle on a farm, or by a shepherd using the dogs in the exercise of his calling or occupation. The occupier of an unenclosed sheep farm who owns a certain number (*e*) of sheep may obtain exemption in respect of a number of dogs and kept by him solely for tending sheep on the farm (*f*).

(*a*) For the penalty for keeping a dog without a licence, or for keeping more than the licensed number of dogs, see Dog Licences Act, 1867 (30 & 31 Vict. c. 5), s. 8; title ANIMALS, Vol. I., p. 403. On a conviction for a second or subsequent offence the justices may not mitigate the penalty to less than one-fourth (*Murray* v. *Thompson* (1889), 22 Q. B. D. 142); and as to recovery of duties and penalties, see p. 737, *post*.

(*b*) Dog Licences Act, 1867 (30 & 31 Vict. c. 5), s. 9; Finance Act, 1908 (8 Edw. 7, c. 16), s. 6; and see Order in Council, dated 19th October, 1908, Stat. R. & O., 1908, p. 470, clause X. He might, however, show that failure to produce was justifiable in the particular circumstances of the case (*Pickard* v. *Sears* (1875), *Times*, 7th August).

(*c*) Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 21.

(*d*) *Ibid.*, s. 20. In this and the preceding case no certificate of exemption need be held.

(*e*) For these numbers, see title ANIMALS, Vol. I., p. 404.

(*f*) Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 22. In these cases a certificate of exemption must be held. This certificate is granted by the proper officer of the county council, and expires on the 31st December next following the date of issue (Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 22; Finance Act, 1908 (8 Edw. 7, c. 16), s. 6; Stat. R. & O., 1908, p. 470, clause XIII.). The grant of the certificate requires the previous consent of a petty sessional court (Dogs Act, 1906 (6 Edw. 7, c. 32), s. 5; Dogs Act Rules, 1906 (Stat. R. & O., 1906, p. 144). Where a certificate of exemption is claimed by a farmer for two dogs, the justices are not entitled to refuse their consent to the grant of such certificate solely on the ground that only one dog is necessary for tending the stock on the farm (*Johnson* v. *Wilson*, [1909] 2 K. B. 497). But the county council has an absolute discretion to give or refuse a certificate of exemption (*Graham* v. *Haig* (1894), 58 J. P. 835; *Phillips* v. *Evans*, [1896] 1 Q. B. 305; Stat. R. & O., 1908, p. 470, clause I.). The possession of the certificate does not exempt, unless the dog is kept solely for the purpose of tending sheep and cattle (*Mackenzie* v. *Scott* (1906), (K. B. D.), 7th March, unreported); but some evidence must be given to show that the dog for which the certificate is held was used otherwise than in tending sheep and cattle on the farm (*James* v. *Nicholas* (1886), 50 J. P. 292). An isolated instance of the use of the dog for catching rabbits with the knowledge of, but without encouragement on the part of, the owner would not be sufficient to destroy the exemption (*Egan* v. *Floyde* (1910), 102 L. T. 745); and see, further, title ANIMALS, Vol. I., p. 404, note (*u*).

SECT. 4. Local Taxation Licences.

SUB-SECT. 3.—*Armorial Bearings.*

Who must be licensed.

1492. Every person who wears or uses armorial bearings is required to take out a licence annually, the rate of duty upon which depends upon whether the bearings are worn or used on a carriage, or are otherwise worn or used (*g*). The licence must be taken out whatever the character of the armorial bearings, and whether they are registered in the College of Arms or not (*h*).

Application for licence.

1493. Application for the licence must be made on an official form of declaration, and the duty must be paid within twenty-one days from the date when the applicant first became liable in the case of new licences, and within the month of January of each year in the case of renewals (*i*).

The licence.

1494. The licence, whenever taken out, can be granted only on payment of the full year's licence duty, and expires on the 31st December following (*k*).

Penalty for use without licence.

1495. Any person who wears or uses armorial bearings without having a licence in force, or who wears or uses them otherwise than he is entitled by his licence to do, is liable to a penalty of £20 (*l*).

Persons exempted.

1496. A licence need not be taken out by any person duly licensed by the proper authority to keep or use a public stage or hackney carriage (*m*) in respect of any armorial bearings worn on such carriage; nor by any person who by right of office wears or uses any of the arms or insignia of any member of the Royal Family or of any corporation or Royal burgh (*n*). A member of an

(*g*) Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 18. Where the armorial bearings are used or worn on a carriage the rate of duty is £2 2*s.*; where otherwise used or worn the rate is £1 1*s.* A licence taken out at the higher rate covers use of the armorial bearings in any way, whether on a carriage or otherwise. Any person who keeps a carriage, whether owned or hired by him, is deemed to wear or use any armorial bearings painted, marked, or otherwise worn on the carriage (*ibid.*, s. 19 (14)).

(*h*) *Ibid.*, s. 19 (13); *Inland Revenue* v. *Cowan* (1896), 33 Sc. L. R. 564. As to registration of arms, see titles NAME AND ARMS, CHANGE OF, Vol. XXI., pp. 353, 354; PEERAGES AND DIGNITIES, Vol. XXII., pp. 288, 289.

(*i*) Revenue Act, 1869 (32 & 33 Vict. c. 14), ss. 22, 27. This applies also where a person liable to licence duty at the lower rate becomes liable to take out a licence at the higher rate. The form of declaration upon which application is made for the licence may be a general one containing particulars of other establishment licences or dog licences required by the applicant; see p. 685, *ante*.

(*k*) Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 18. As to transferability of the licence during its currency, see p. 685, *ante*.

(*l*) Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 27.

(*m*) *Ibid.*, s. 19 (15); see p. 691, *post*; and as to hackney carriages, see also title STREET AND AERIAL TRAFFIC.

(*n*) Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 19 (1), (15). It is not the practice to require the individual members of a club to take out a licence to use at the club any armorial bearings for the use of which the club is licensed, nor to require the other members of a family to pay licence duty for using the armorial bearings on paper, plate, or the like, where the head of the family holds a licence. For exemptions from establishment licence duty generally, see pp. 685, 686, *ante*.

incorporated society must, however, take out a licence if he wishes to use the arms of the society on his letter paper (*o*).

SUB-SECT. 4.—*Carriages and Motor Cars.*

Carriage licence.

1497. Every person who keeps (*p*) a carriage (*a*) is required to take out a licence at the appropriate rate (*b*). If the carriage is let on hire for a period less than a year, the licence must be taken out by the owner; if for a year or upwards, by the hirer (*c*).

Penalty for keeping carriage without licence.

1498. Any person who keeps a carriage without being licensed, or who keeps a greater number of carriages than he is authorised by licences held by him to keep, is liable to a penalty of £20 (*d*).

Licence duty on carriages.

1499. The licence duty payable on a carriage other than a hackney carriage (*e*), and not being a motor (*f*), depends upon the number of wheels on the carriage and, in case it is not drawn or propelled by mechanical power, upon the number of horses or mules by which it is drawn (*g*).

(*o*) *London County Council* v. *Kirk*, [1912] 1 K. B. 345.

(*p*) The "keeping" in order to involve liability must be by the person for his own use or for the purpose of letting on hire (*Davey* v. *Thompson* (1886), 34 W. R. 411; and a cab proprietor who has in reserve in his yard a number of spare cabs ready for use and intended to be used does not "keep" them in this sense until he begins to use them (*London County Council* v. *Fairbank*, [1911] 2 K. B. 32).

(*a*) The term "carriage" includes a tramcar and a motor car, but does not include a railway carriage (Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4 (1); Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), s. 1); and see title TRAMWAYS AND LIGHT RAILWAYS. A railway carriage for this purpose includes an electric tramcar running along a public road on lines constructed under an order made under the Light Railways Act, 1896 (59 & 60 Vict. c. 48) (*A.-G.* v. *Yorkshire (Woollen District) Electric Tramways, Ltd.*, [1907] 2 K. B. 991).

(*b*) Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 18; Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4; Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), s. 8; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 86.

(*c*) Customs and Inland Revenue Act, 1875 (38 & 39 Vict. c. 23), s. 11. This applies where the carriage is let on a hire-purchase agreement, a right to resume possession on default in payment of any instalments of the purchase-money being reserved to the person letting on hire (*Barker* v. *Callow* (1877), 2 C. P. D. 558).

(*d*) Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 27.

(*e*) For definition of "hackney carriage," see pp. 691, 692, *post*.

(*f*) For definition of motor car, see note (*l*), p. 690, *post*. Motor bicycles and motor tricycles are liable to motor car duty (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 86 (9), Sched. V., Part II.).

(*g*) Where the carriage has four or more wheels, and is fitted or adapted to be drawn by two or more horses or mules, or drawn or propelled by mechanical power, the annual rate of duty is £2 2*s*.; for such a carriage if drawn by one horse or mule only, £1 1*s*.; on a carriage having less than four wheels, 15*s*. (Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4). Liability to duty at the higher rate is incurred if the carriage is fitted to be, though not proved to have been, drawn by two or more horses or mules (*Flint* v. *Miller* (1891), June 5th, Q. B. D. (unreported)). Where a person commences to keep or use a carriage on or after the 1st October in any year, he is entitled to obtain a licence at half the usual duty (Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4 (2)).

SECT. 4. Local Taxation Licences.

Exempted vehicles.

1500. No licence is required:—

(1) for a waggon or cart constructed or adapted for use and used solely for the conveyance of goods or burden in the course of trade or husbandry, provided that the owner's name and residence or place of business are legibly painted on it in letters at least one inch in length (*h*);

(2) for a waggon or cart used for conveying the owner or his family to or from any place of worship on Sunday or on Christmas Day or Good Friday or any day appointed for a public fast or thanksgiving, provided such vehicle is otherwise non-taxable (*i*);

(3) for any carriage by reason only of its use, without payment or promise of payment, for the conveyance of electors to or from the poll at an election (*k*).

Licence duty on motor cars, bicycles, and tricycles.

1501. The licence duty upon motor cars weighing less than 3 tons unladen is assessed upon a scale based on the horse-power of the car, the unit of horse-power being calculated according to regulations made by the Treasury (*l*). Licences for motor bicycles or tricycles are granted at a fixed rate (*m*).

As to when a person commences to keep the carriage so as to become liable to pay duty, see *London County Council* v. *Fairbank*, [1911] 2 K. B. 32.

(*h*) Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4 (3). The vehicle in order to be non-taxable must be *ejusdem generis* with a waggon (*Danby* v. *Hunter* (1879), 5 Q. B. D. 20). It must be inscribed before use (*Whitrow* v. *Brown* (1891), 56 J. P. 374); and it must be constructed or adapted solely for use, and solely used, for the conveyance of goods or burden (*Hanworth* v. *Williams* (1903), 67 J. P. 315; *Moore* v. *Lewis*, [1906] 1 K. B. 27; *Strutt and Parker* v. *Clift*, [1910] 1 K. B. 1, distinguishing *Egan* v. *Floyde* (1910), 102 L. T. 745). Where the cart is non-taxable, it does not cease to be entitled to exemption if used occasionally by the owner to drive his farm hands to and from their work (*Latchford* v. *Kelsey* (1907), 96 L. T. 620); nor from the mere fact that persons are driven in it to market for the purpose of selling goods at such market (*Cook* v. *Hobbs*, [1911] 1 K. B. 14). The use of a properly inscribed vehicle for carrying circus accessories and performers in a parade is not a use "in the course of trade or husbandry" (*Speak* v. *Powell* (1873), L. R. 9 Exch. 25); nor is use by a traveller for the purpose of collecting debts and obtaining orders (*Whitham* v. *Morris* (1905) 70 J. P. 11); but a dog-cart fitted and used for carrying samples may be, if so found by the magistrate (*Collman* v. *Stokes* (1910), 103 L. T. 592).

(*i*) That is, when the waggon or cart is duly inscribed and is otherwise used solely for the conveyance of burden in the course of husbandry (Customs and Inland Revenue Act, 1872 (35 & 36 Vict. c. 20), s. 6); see the text, *supra*.

(*k*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 14 (4); and see title ELECTIONS, Vol. XII., p. 304. For general exemptions from establishment licence duty, see p. 686, *ante*.

(*l*) The car must be one propelled by mechanical power, must not be used for the purpose of drawing more than one vehicle, and the combined weight of the car and vehicle unladen must not exceed 4 tons (Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), s. 1; Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 20; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 86 (1)); and see title STREET AND AERIAL TRAFFIC. The Treasury having made regulations under the last-mentioned provision, the duty is to be calculated in accordance with these, whatever be the actual

(*m*) For note (*m*), see next page.

Exempted motors.

Allowances.

1502. No licence is required for a motor fire engine or ambulance (*n*).

An officer of the Army Motor Reserve who uses a car kept by him for the purposes of the Reserve for at least six days in any year may obtain an allowance in respect of the yearly duty payable on the car proportionate to the number of days in the year for which the car was so used (*o*); and a duly qualified medical practitioner may obtain a licence for a motor car kept by him for the purpose of his profession at half the usual rate (*p*).

Hackney carriage licence.

1503. A hackney carriage licence must be taken out annually in respect of every carriage kept or used to stand or ply for hire, and for any carriage let for hire by a coach-builder or other

horse-power of the car (*London County Council* v. *Turner* (1911), 105 L. T. 380). The Treasury regulations provide that the horse-power of any motor car deriving its motive power wholly from a steam or other engine worked by a cylinder or cylinders is to be taken as :—(1) In the case of a single-cylinder engine, the horse-power attributable to the cylinder of the engine, and in the case of an engine having two or more cylinders, the sum of the horse-powers of the separate cylinders. The horse-power attributable to any cylinder is taken as proportional to the square of the internal diameter of the cylinder calculated on the basis of 1 horse-power for every $2\frac{1}{2}$ square inches in the case of a single-acting cylinder having a single piston, or for every $1\frac{3}{5}$ square inches in the case of such a cylinder having two pistons, or for $1\frac{1}{4}$ square inches in the case of a double-acting cylinder having a single piston. (2) Where a motor car derives its motive power otherwise than from an engine worked by a cylinder or cylinders, it is to be deemed to be of a horse-power exceeding 12, but not exceeding 15, provided that where the motive power is derived in part from an engine worked by a cylinder or cylinders, the horse-power is not to be taken to be less than that attributable to such cylinder or cylinders. (3) Where, in consequence of exceptional design or construction of the engine, the horse-power calculated according to these rules is substantially less than the actual horse-power, it is to be taken to be the same as that of a car of equal efficiency deriving its motive power from an ordinary cylinder engine. A motor car of a weight exceeding 3 tons might be liable to carriage licence duty at the ordinary rate.

(*m*) The rates of duty at present in force are :—

	£	*s.*	*d.*
Motor bicycles and motor tricycles	1	0	0
Motor cars not exceeding $6\frac{1}{2}$ horse-power . .	2	2	0
Exceeding $6\frac{1}{2}$ but not exceeding 12 horse-power .	3	3	0
,, 12 ,, 16 ,, .	4	4	0
,, 16 ,, 26 ,, .	6	6	0
,, 26 ,, 33 ,, .	8	8	0
,, 33 ,, 40 ,, .	10	10	0
,, 40 ,, 60 ,, .	21	0	0
,, 60	42	0	0

(Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Sched. V., Part II.). A licence may be obtained at half the appropriate rate where the car was first kept or used after the 1st October in any year (Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4 (2)). As to "keeping," see note (*p*), p. 689, *ante*. For allowance or repayment of licence duty, see p. 629, *ante*.

(*n*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 86 (6).

(*o*) *Ibid.*, s. 86 (5). He is required to produce an official certificate of the use.

(*p*) *Ibid.*, s. 86 (4). A certificate of the appropriate county council that the applicant is entitled to the allowance must be produced with the declaration when the licence is taken out (Declaration Form 1 A).

SECT. 4. Local Taxation Licences.

person whose business it is to sell or let carriages for hire, provided that the carriage is not let for a period of three months or more (*q*).

Licence duty.

1504. The duty payable on a hackney carriage is a fixed sum irrespective of the character of the carriage (*r*).

Motor hackney carriage duty.

In the case of a motor hackney carriage weighing unladen not less than 1 ton and not more than 3 tons, an additional duty is chargeable on it as a light locomotive (*s*).

SUB-SECT. 5.—*Male Servants.*

Servants in respect of whom licence is necessary

1505. A male servant's licence must be taken out by every person who employs a male servant in any of the following capacities:—*maître d'hôtel*, house steward, master of the horse, groom of the chambers, *valet de chambre*, butler, under-butler, clerk of the kitchen, confectioner, cook, house porter, footman, page, waiter, coachman, groom, motor-car driver, postilion, stable-boy, gardener, under-gardener, park-keeper, gamekeeper, under-gamekeeper, huntsman, or whipper-in (*t*).

(*q*) Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4. An omnibus running along a fixed route, although not hired by any particular passenger, is a hackney carriage (*Hickman* v. *Birch* (1889), 24 Q. B. D. 172); and see title STREET AND AERIAL TRAFFIC. A carriage let for three months or more is chargeable with duty as an ordinary carriage or motor; see p. 689, *ante*.

(*r*) The rate at present in force is 15*s*. When the carriage is first kept or used after the 1st October in any year, a licence is granted at half the yearly rate (Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4). It is submitted that the licence at the reduced rate might be obtained where the carriage was kept before the 1st October in any year, provided it was not also used prior to that date; see *London County Council* v. *Fairbank*, [1911] 2 K. B. 32.

(*s*) Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), s. 8; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 86 (3). This duty is charged at the following rate:—

	£	*s.*	*d.*
Where the weight exceeds 1 ton but does not exceed 2 tons unladen	2	2	0
Exceeds 2 tons unladen	3	3	0

The full duty for the year must be paid for the light locomotive, no matter when the licence is taken out. The Local Government Board having, by regulations (Stat. R. & O., 1904, p. 522) dealing with the use of motor cars on highways, provided that, subject to the conditions laid down in the Order, a motor car might be used on a highway if the weight of the car unladen does not exceed 5 tons, or, with the weight of any unladen vehicle drawn by it, 6½ tons, the additional light locomotive duty has, since the coming into force of the regulations been levied on cars not exceeding 5 tons weight unladen. It is difficult to see what is the legal justification for this impost on cars between the weights of 3 tons and 5 tons.

(*t*) Revenue Act, 1869 (32 & 33 Vict. c. 14), ss. 18, 19 (3); Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 13. The employment, to involve liability to pay the licence duty, must be in one of the enumerated capacities (*Whiteley* v. *Burns*, [1908] 1 K. B. 705). The person who furnishes a male servant on hire is regarded as the employer of the servant (Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 19 (4)). The occasional or partial use in a taxable capacity of a male servant ordinarily employed in a non-taxable capacity does not involve liability to pay licence duty (Customs and Inland Revenue Act, 1876 (39 & 40 Vict. c. 16), s. 5; *Yelland* v.

1506. Any person employing a male servant without a licence, or employing a greater number of male servants than he is authorised by any licence held by him to employ, is liable to a penalty of £20 (*u*).

Penalty for employing without licence.

1507. The licence covers the employment, by the person to whom it was granted, at any time during its currency, of a number of male servants not exceeding the number for which it was taken out (*a*); and, whenever issued, it is granted only on payment of the full duty for the year and expires on the 31st December following (*b*).

The licence.

1508. A male servant's licence is not required to be taken out by—

Exemptions.

(1) Officers in the Army or Navy, in respect of any soldiers or sailors employed by them in accordance with the regulations of His Majesty's Service (*c*);

(2) Hotel keepers, publicans and refreshment house keepers, in respect of any servants wholly employed by them in the course of their business (*d*);

Winter (1885), 53 L. T. 912; *Helsby* v. *Wintle* (1895), 59 J. P. 309; *Bedford* (*Duke*) v. *London County Council* (1911), 104 L. T. 889); but if the servant was *bonâ fide* employed in both capacities, a licence must be taken out (*Yelland* v. *Vincent* (1883), 47 J. P. 230). Where a male servant is employed for a portion only of each day and does not reside in his employer's house, no licence need be taken out, unless the portion during which he is employed is a substantial one (Customs and Inland Revenue Act, 1876 (39 & 40 Vict. c. 16), s. 5; *Schulze* v. *Steele* (1890), 27 Sc. L. R. 636; see *Bedford* (*Duke*) v. *London County Council*, *supra*; *Braddell* v. *Baker* (1911), 27 T. L. R. 182). In a case not coming within the exemption, employment in one of the enumerated capacities for a period, however short, makes a licence necessary (*Spencer* v. *Sheerman* (1871), 23 L. T. 873). The term "male servant" does not include an apprentice employed under a *bonâ fide* contract of apprenticeship, whatever be the nature of his duties (*Horan* v. *Hayhoe*, [1904] 1 K. B. 288); and men employed to work in a garden, and found by the justices to be labourers, are not taxable as under-gardeners (*Dillon* v. *Bath* (*Marquis*) (1899), 81 L. T. 186; *Bedford* (*Duke*) v. *London County Council*, *supra*). A "jobbing gardener" is not a taxable male servant (*Braddell* v. *Baker*, *supra*). Three drivers employed by a carman under contract with a local education authority to drive defective children from their homes to provided schools have been held not to be "coachmen" within the Act (*London County Council* v. *Allen* (1912), 29 T. L. R. 30). The steward of a club may be taxable as the male servant of the committee of the club, although he is himself a member of the club (*Solomon* v. *Cropper* (1898), 79 L. T. 301). The committee of a club are liable for male servant's licence duty on male cooks employed at the club, although the club is subsidised by the Government (*London County Council* v. *Houndle* (1911), 105 L. T. 211).

(*u*) Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 27.

(*a*) For transferability of the licence, see pp. 685, 686, *ante*.

(*b*) Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 18. The rate of duty at present in force is 15*s*.

(*c*) *Ibid.*, s. 19 (5).

(*d*) Customs and Inland Revenue Act, 1873 (36 & 37 Vict. c. 18), s. 4 (4). It is submitted that this exemption would extend to cover male servants employed at any house of entertainment (see *Thompson* v. *Lacy* (1820), 3 B. & Ald. 283), or at a boarding establishment (*Strathearn Hydropathic Establishment Co., Ltd.* v. *Inland Revenue Solicitor* (1881), 18 Sc. L. R. 564); but it would not cover male servants employed in one of the enumerated capacities in an ordinary trading establishment (*Whiteley* v. *Burns*, [1908] 1 K. B. 705, as explained in *Marchant* v. *London County Council* [1910] 2 K. B. 379).

SECT. 4. Local Taxation Licences.

(3) A livery stable-keeper who has made entry of his premises for any servant employed by him at such premises in the course of his trade other than a servant employed to drive a carriage with any horse let for a period of more than twenty-eight days (*e*);

(4) A person licensed to keep a public stage or hackney carriage, in respect of any servant necessarily employed by him to drive such carriage (*e*).

SUB-SECT. 6.—*Game, to Kill.*

Who must be licensed.

1509. Every person who takes, kills, or pursues, or assists in the taking, killing, or pursuing of any game (*f*), or any woodcock, snipe, quail, landrail, conies, or deer, must take out a licence (*g*).

Penalty for acting without licence.

1510. A penalty of £20 is incurred by any unlicensed person who does any act for which he is required to hold a game licence (*h*).

Effect of trespassing.

1511. A licence to kill game (*i*) becomes void on the conviction of the holder of the offence of unlawfully trespassing in pursuit of game, or of refusing to quit the lands trespassed on, or to give his name and address when requested to do so by the landowner or his servant by whom he is found trespassing (*j*).

Sales to game dealer.

1512. The holder of a full year's licence to kill game is authorised to sell game to a licensed game dealer (*k*).

(*e*) Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 19 (5). As to exemptions from establishment licence duty generally, see p. 686, *ante*.

(*f*) The term "game" here includes hares, pheasants, partridges, grouse, heath or moor game, black game and bustards (Game Act, 1831 (1 & 2 Will. 4, c. 32), s. 2); see title GAME, Vol. XV., p. 208.

(*g*) Game Licences Act, 1860 (23 & 24 Vict. c. 90), s. 4. The rates of duty are:—

	£	*s.*	*d.*
For a licence taken out after the 31st July and before the 1st November to expire on the 31st July next following	3	0	0
To expire on the 31st October of the year in which taken out	2	0	0
Taken out after the 1st November to expire on the 31st July next following	2	0	0
Taken out for a continuous period of fourteen days	1	0	0

(Game Licences Act, 1860 (23 & 24 Vict. c. 90), s. 16; Customs and Inland Revenue Act, 1883 (46 & 47 Vict. c. 10), ss. 4, 5). The taking of game out of a trap in which it had been accidentally caught with a view to killing or keeping it is a taking for which a licence must be held (*Watkins* v. *Price* (1877), 47 L. J. (M. C.) 1); and see title GAME, Vol. XV., p. 209. The taking, killing, and pursuing game without a licence constitutes only one offence (*Laxton* v. *Jefferies* (1893), 58 J. P. 318), although proof of either act involves liability to the penalty imposed for killing game without a licence (*Hebden* v. *Henty* (1819), 1 Chit. 607; *Hunter* v. *Clark* (1902), 66 J. P. 247); and see title GAME, Vol. XV., p. 246, note (*b*).

(*h*) Game Licences Act, 1860 (23 & 24 Vict. c. 9), s. 4. As to proceeding against an offender under the Gun Licence Act, 1870 (33 & 34 Vict. c. 57), if a charge against him in respect of a game licence fails, see title GAME, Vol. XV., p. 251.

(*i*) As to the offence of refusing to produce a game licence when requested by certain authorised persons to do so, see title GAME, Vol. XV., p. 250; and see *ibid.*, p. 247, note (*i*); Order in Council, 19th October, 1908 (Stat. R. & O., 1908, p. 470), clause X.

(*j*) Game Licences Act, 1860 (23 & 24 Vict. c. 90), s. 11.

(*k*) Game Act, 1831 (1 & 2 Will. 4, c. 32), s. 17. But not the holder of a

1513. The persons exempted from the requirement to take out a game licence are referred to elsewhere (*l*). Exempted persons.

1514. A gamekeeper's licence to kill game may be taken out for a licensed (*m*) male servant employed as a gamekeeper at a reduced annual rate (*n*). Where during the currency of a licence the gamekeeper ceases to be in the service of the master, the licence may be transferred to the licensed male servant who succeeds him in the employment (*o*). Gamekeeper's licence.

SUB-SECT. 7.—*Guns.*

1515. Every person (*p*) who uses or carries a gun (*q*) elsewhere than in a dwelling-house or the curtilage (*r*) of a dwelling-house, and who does not hold a licence to kill game, must take out a gun licence (*s*). Where a gun is carried in parts by two or more persons in company, each is required to hold a licence (*a*). Who must be licensed.

licence for a shorter period; see p. 657, *ante;* title GAME, Vol. XV., p. 257.

(*l*) See Game Licences Act, 1860 (23 & 24 Vict. c. 90), s. 5; and see Hares Act, 1848 (11 & 12 Vict. c. 29), s. 2; Ground Game Act, 1880 (43 & 44 Vict. c. 47), s. 1; Ground Game (Amendment) Act, 1906 (6 Edw. 7, c. 21), s. 2; title GAME, Vol. XV., pp. 248, 249; and see *ibid.*, pp. 221—224, 248, note (*r*); *Lewis* v. *Taylor* (1812), 16 East, 49; *Ex parte Sylvester* (1829), 9 B. & C. 61.

(*m*) The male servant's licence (see p. 692, *ante*) may be taken out for the keeper, either by the master who employs him as gamekeeper, or by some other master. In the latter case a deputation or appointment signed by the master who took out the male servant's licence is required before the game licence is issued (Game Licences Act, 1860 (23 & 24 Vict. c. 90), s. 7).

(*n*) *Ibid.* The duty for the year is £2. The full duty is chargeable irrespective of the date when the licence is taken out, and the licence expires on the 31st July following (Customs and Inland Revenue Act, 1883 (46 & 47 Vict. c. 10), s. 4). As to the local character of the licence and the gamekeeper's power to sell game thereunder, see title GAME, Vol. XV., p. 242. As to gamekeepers generally, see *ibid.*, pp. 240—242; as to licences to sell game, see p. 656, *ante.*

(*o*) Game Licences Act, 1860 (23 & 24 Vict. c. 90), s. 8. The transfer is indorsed on the licence by the authorised officer of the county council (Stat. R. & O., 1908, p. 470, clauses I. and IX.).

(*p*) Subject to the exceptions mentioned in the text, *infra.*

(*q*) A gun includes a firearm of any description, and an air gun, or any other kind of gun from which any shot or other missile can be discharged (Gun Licence Act, 1870 (33 & 34 Vict. c. 57), s. 2). It includes a pistol other than a mere toy pistol (*Campbell* v. *Hadley* (1876), 40 J. P. 756; *Bryson* v. *Gamage, Ltd.*, [1907] 2 K. B. 630); but not an antique pistol sold as a curiosity or ornament (Pistols Act, 1903 (3 Edw. 7, c. 18), ss. 3, 8).

(*r*) See title GAME, Vol. XV., p. 251, note (*g*). The curtilage of a dwelling-house must be a space occupied in connection with the house and not separated from it by any intervening land (*Asquith* v. *Griffin* (1884), 48 J. P. 724). It is the practice to grant a gun licence to the proprietor of a travelling shooting gallery, to cover the use of a gun by customers resorting to the gallery.

(*s*) Gun Licence Act, 1870 (33 & 34 Vict. c. 57), s. 7; and see, further, title GAME, Vol. XV., pp. 251—253.

(*a*) Gun Licence Act, 1870 (33 & 34 Vict. c. 57), s. 8. A person in company with another who carried a gun might be found guilty of using it, although he was not shown to have handled it (*R.* v. *Littlechild*, *R.* v.

SECT. 4. Local Taxation Licences.

Penalty for using or carrying gun without licence.

1516. A penalty of £10 is incurred by anyone using or carrying a gun without having in force the necessary licence (*b*).

The licence.

1517. A gun licence, whenever taken out, is granted only on payment of the full year's duty and expires on the 31st July following (*c*). It, however, becomes void if the holder is convicted of an offence in connection with trespassing in pursuit of game (*d*).

Production of licence.

1518. Any person found using or carrying a gun outside the curtilage of a dwelling-house may be required by a police officer or an authorised officer of the county council to produce a gun or game licence then in force, or to give his name and address (*e*).

Exempted persons.

1519. A gun licence is not required by:—

(1) Any member of the Army, Navy, Territorial, or police force using a gun on duty or in target practice (*f*); (2) a person carrying a gun belonging to and for the sole use of a person having a gun or game licence then in force (*g*); (3) a gunsmith or his servants carrying or testing a gun in the course of trade, or a common carrier carrying a gun in the course of his trade; (4) an occupier of lands using a gun on such lands for the sole purpose of scaring birds or killing vermin (*h*).

Heslop (1871), 35 J. P. 661, *per* LUSH, J.); and see title GAME, Vol. XV., p. 251, note (*f*).

(*b*) Gun Licence Act, 1870 (33 & 34 Vict. c.57), s. 7. As to proceedings, see title GAME, Vol. XV., pp. 252, 253.

(*c*) Gun Licence Act, 1870 (33 & 34 Vict. c. 57), s. 3; Customs and Inland Revenue Act, 1883 (46 & 47 Vict. c. 10), s. 6. The rate of yearly duty is 10*s*.

(*d*) Under the Game Act, 1831 (1 & 2 Will. 4, c. 32), s. 30; Gun Licence Act, 1870 (33 & 34 Vict. c. 10), s. 11; see title GAME, Vol. XV., pp. 228 *et seq.*, 252.

(*e*) Gun Licence Act, 1870 (33 & 34 Vict. c. 57), s. 9. For the penalty incurred by refusal, see title GAME, Vol. XV., p. 253. This does not apply to a person in the naval or military service of the Crown or the police force using or carrying a gun in the performance of his duty (Gun Licence Act, 1870 (33 & 34 Vict. c. 10), s. 9); and see title GAME, Vol. XV., pp. 252, 253. A licence need not be produced if the name and address are furnished (*Molton* v. *Rogers* (1802), 4 Esp. 215).

(*f*) This exemption is in practice extended to members of recognised rifle clubs; and see title ROYAL FORCES.

(*g*) Gun Licence Act, 1870 (33 & 34 Vict. c. 57), s. 5 (3). He must, on demand by an officer of the county council or police, or by the owner or occupier of the land on which the gun is carried, give his own name and address as well as the name and address of his employer (*ibid.*; Order in Council, 19th October, 1908 (Stat. R. & O., 1908, clause X.).

(*h*) If such occupier himself holds a gun or game licence, this exemption is allowed to any person using a gun on his behalf (Gun Licence Act, 1870 (33 & 34 Vict. c. 57), s. 7); and see title GAME, Vol. XV., p. 251, note (*k*). Rabbits are not "vermin" (*Lord Advocate* v. *Young* (1898), 62 J. P. 199); and as to the meaning of this term, see, further, title GAME, Vol. XV., p. 252, note (*l*).

Part VIII.—Drawbacks and Excise Allowances.

SECT. 1.—*Drawbacks.*

SECT. 1. Drawbacks.

SUB-SECT. 1.—*In General.*

1520. "Drawback" is the repayment, upon the exportation of a commodity, of duties previously paid upon it (*i*). Definition.

Drawbacks are under the management of the Commissioners of Customs and Excise (*j*), and must be paid in British currency (*k*). Management.

Excise drawbacks are allowed on the exportation of beer, spirits, glucose, saccharine, and home-grown tobacco manufactured (*l*). Excise drawbacks.

Customs drawbacks are allowed on the exportation of beer, coffee, sugar and sugar goods, saccharine, and imported tobacco manufactured in the United Kingdom (*m*). Customs drawbacks.

SUB-SECT. 2.—*Conditions of Payment.*

1521. Every exporter of goods on drawback must enter into bond for the due shipping and landing of the goods (*n*). He must give a shipping notice bill in a prescribed form for every consignment of goods to be shipped (*o*). Goods on which drawback is claimed must be of merchantable quality (*p*); they must be correctly described in the shipping notice to export; and goods found on examination to be of less value than therein stated, or to vary from the description given, are liable to forfeiture, and the person entering the goods and claiming the drawback incurs a penalty of Entry for shipping and landing.

(*i*) See Wharton's Law Lexicon. It is also sometimes paid under special enactments on duty-paid commodities consumed within the United Kingdom, *e.g.*, motor spirit used for purposes other than supplying motive power for motor cars under the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 85 (3) (see p. 621, *ante*); molasses delivered under the Regulations of the Commissioners by a refiner of sugar to a licensed distiller to be used in the manufacture of spirits under the Finance Act, 1901 (1 Edw. 7, c. 7), s. 2, Sched. (see p. 604, *ante*), or for use as a food for stock under the Revenue Act, 1903 (3 Edw. 7, c. 46), s. 1 (see p. 604, *ante*); or refuse of British manufactured tobacco deposited in warehouses under the Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 3 (see p. 647, *ante*).

(*j*) See pp. 544 *et seq.*, *ante*.

(*k*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 17; Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 95; Finance Act, 1908 (8 Edw. 7, c. 16), s. 4.

(*l*) See pp. 615, 618, 623, 625, 627, *ante*.

(*m*) See pp. 595, 597, 599, 604, 606, 647, *ante*. As to customs duties generally, see pp. 587 *et seq.*, *ante*.

(*n*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 104.

(*o*) *Ibid.*, s. 105.

(*p*) They must be worth at least the duties of drawback claimed upon them (Excise Drawback Act, 1817 (57 Geo. 3, c. 87), s. 10). As regards British manufactured tobacco exported, there are special requirements in the Tobacco Act, 1840 (3 & 4 Vict. c. 18), s. 14; the Manufactured Tobacco Act, 1863 (26 & 27 Vict. c. 7), s. 1; and the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 108; see pp. 608, 647, *ante*.

SECT. 1. Drawbacks.

£100, or treble the amount of the drawback, at the election of the Commissioners (*q*). Only the goods described in the shipping notice may be shipped on drawback, and goods once shipped must not be relanded, nor may the packages in which they are contained be opened or have the marks thereon altered or obliterated (*r*).

Unlawful shipping and landing.

1522. Any person shipping goods on drawback other than those specified in the shipping notice, or relanding such goods when shipped, is liable to a penalty of £200, or treble the value of the goods, at the election of the Attorney-General, and any goods relanded are forfeited, as well as any ship or vessel from which they are unshipped (*s*). Any person opening the packages in which the goods are contained, or altering or obliterating the marks thereon, is liable to a penalty of £100 (*t*).

Shipping tonnage.

1523. No person may export any goods entitled to drawback on exportation, nor enter such goods for exportation to parts beyond the seas, in any ship of less burden than 40 tons (*a*).

SUB-SECT. 3.—*How Paid.*

Debenture certificate. Form.

1524. Drawback is paid upon a debenture certifying how the goods were disposed of (*b*).

The debenture must be made out in the name of the real owner or his duly authorised agent, who must subscribe upon it a declaration that the goods mentioned therein have been actually exported, and have not been relanded and are not intended to be relanded in any part of the United Kingdom, and that the person claiming drawback (who must be named in the debenture) was at the time

(*q*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 106.

(*r*) Excise Drawback Act, 1817 (57 Geo. 3, c. 87), s. 12; Revenue Act, 1863 (26 & 27 Vict. c. 33), s. 16. Where the person exporting spirits had entered into bond for the due removal of the goods and their conveyance to the foreign port designated on the notice to export, and the spirits so exported were carried to their destination but not landed there, and after having been partly used on the voyage a part was brought back and discharged at the London dock, this was held to be a breach of the bond to export according to notice (*R.* v. *Dixon* (1822), 11 Price, 204).

(*s*) Excise Drawback Act, 1817 (57 Geo. 3, c. 87), s. 12. And by the Excise Management Act, 1834 (4 & 5 Will. 4, c. 51), s. 12, goods fraudulently removed or produced to obtain drawback are forfeited, and the person offending is liable to a fine of £100, or treble the value of the goods, at the election of the Commissioners; see also Customs and Inland Revenue Act, 1879 (42 & 43 Vict. c. 21), s. 14.

(*t*) Revenue Act, 1863 (26 & 27 Vict. c. 33), s. 17.

(*a*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 100; Customs and Inland Revenue Act, 1879 (42 & 43 Vict. c. 21), s. 7.

(*b*) In the case of spirits deposited in warehouse by a rectifier, certifying the deposit, and in the case of goods exported, certifying the entry outwards of the vessel (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 95 (11); Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 117). No stamp duty is payable on a debenture or certificate for entitling any person to receive any allowance by way of drawback or otherwise of customs or excise in respect of any goods, wares or merchandise exported or shipped to be exported from the United Kingdom (Finance Act, 1907 (7 Edw. 7, c. 13), s. 11 (see p. 721, *post*)); and as to stamp duties generally, see pp. 700 *et seq.*, *post*.

of the entry and shipping, and continued to be entitled to the drawback thereon (*c*).

SUB-SECT. 4.—*Limitation of Time for Payment.*

Two years' limitation.

1525. No payment by way of drawback either of customs or excise may be made after the expiration of two years from the date of user, deposit, or exportation, as the case may be, of the goods in respect of which the drawback is claimed to be paid (*d*).

SUB-SECT. 5.—*Isle of Man.*

Drawbacks equal to amount of import duty.

1526. In the case of goods liable to a duty on importation into the Isle of Man a drawback equal to the amount of the import duty paid is allowed on the exportation of the goods to Great Britain or Ireland or to foreign parts (*e*).

SECT. 2.—*Excise Allowances.*

SUB-SECT. 1.—*Classes of Goods on which Payable.*

Allowance of 3*d.* per proof gallon.

1527. An allowance of 3*d.* per proof gallon is paid on (*f*)—

(1) British plain spirits (*g*) exported, shipped as stores, or used in a bonded warehouse for fortifying wines, or for any other purpose to which foreign spirits may be applied (*h*);

(2) Rectified spirits of wine deposited on drawback in a duty-free warehouse by a licensed rectifier (*i*);

(3) The quantity of dutiable spirits used in the manufacture of mineralised methylated spirits exported by a methylator (*j*);

(4) British plain spirits, foreign unsweetened spirits, and rum or

(*c*) Exports Act, 1786 (26 Geo. 3, c. 40), s. 18; Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 118.

(*d*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 119; Finance Act, 1895 (58 & 59 Vict. c. 16), s. 7.

(*e*) Customs (Isle of Man) Tariff Act, 1874 (37 & 38 Vict. c. 46), ss. 4, 5; Isle of Man (Customs) Act, 1903 (3 Edw. 7, c. 35), s. 1 (2); Finance Act, 1908 (8 Edw. 7, c. 16), Sched. As to imports into the Isle of Man, see p. 592, *ante*.

(*f*) This allowance is intended to compensate the distiller for the increased cost of producing plain British spirits, owing to the restrictions placed on the manufacture in order to secure the revenue against evasion. The distiller is thus placed in a position to compete in neutral markets with producers of foreign spirits, who enjoy comparative freedom from revenue restrictions in producing their spirits. No stamp duty is payable upon any receipt given for any allowance paid on goods exported (Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I. (12)). As to stamp duties generally, see pp. 700 *et seq.*, *post*.

(*g*) British plain spirits are spirits which are liable to a duty of excise and which have had no flavour communicated thereto or ingredient or material mixed therewith (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 3; and see pp. 623 *et seq.*, *ante*).

(*h*) Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 3; Finance Act, 1902 (2 Edw. 7, c. 7), s. 5.

(*i*) Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 21. Spirits of wine are rectified spirits of a strength not less than 43 degrees above proof (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 3; see p. 623, *ante*); and, as to licensed rectifiers, see pp. 641 *et seq.*, *ante*.

(*j*) Finance Act, 1895 (58 & 59 Vict. c. 16), s. 6; Finance Act, 1902 (2 Edw. 7, c. 7), s. 5; and, as to methylated spirits, see pp. 639 *et seq.*, *ante*.

SECT. 2. Excise Allowances.

imitation rum, used for the manufacture of industrial methylated spirits (*k*); and

(5) Spirits, other than methylic alcohol, received for use in arts or manufactures duty free under the Finance Act, 1902 (*l*), s. 8 (*m*).

Allowance of 5*d.* per proof gallon.

1528. An allowance of 5*d.* per proof gallon is paid on (*n*)—

(1) British compounded spirits of a strength exceeding 11 degrees over proof, upon their deposit on drawback in a duty-free warehouse by a licensed rectifier (*o*);

(2) British compounded spirits of a strength not exceeding 11 degrees over proof on being exported, shipped as stores, or used in a bonded warehouse for a purpose to which foreign spirits may be applied (*p*);

(3) British liqueurs, tinctures or medicinal spirits, essences, and perfumed spirits, on exportation or shipment as stores (*q*).

SUB-SECT. 2.—*Limitation of Time for Payment.*

Two years' limitation.

1529. No payment in respect of these allowances may be made after the expiration of two years from the date of the deposit, user, or shipment of the spirits, as the case may be (*r*).

Part IX.—Stamp Duties.

SECT. 1.—*Management.*

General powers of management of the Commissioners of Inland Revenue.

1530. All duties chargeable as stamp duties, and all fees collected by means of stamps, are under the management of the Commissioners of Inland Revenue (*s*), who, in addition to their general powers in respect of the Inland Revenue (*t*), are specially empowered

(*k*) Revenue Act, 1906 (6 Edw. 7, c. 20), s. 1 (1).

(*l*) 2 Edw. 7, c. 7.

(*m*) Revenue Act, 1906 (6 Edw. 7, c. 20), s. 1 (1); and see note (*o*), p. 624, *ante*.

(*n*) The increased allowance is intended to cover the further loss in the production of compounded spirits which arises from the waste of duty-paid spirits used in the manufacture of compounds, and also to compensate the producer for the revenue prohibition (see p. 642, *ante*) against making compounds on or near the premises of a licensed distiller; see Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 88. To be entitled to the higher rate of allowance, the spirits must have been distinctively altered from the character of British plain spirits (Finance Act, 1902 (2 Edw. 7, c. 7), s. 5 (2)).

(*o*) Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 3; Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 21; Finance Act, 1902 (2 Edw. 7, c. 7), s. 5; and, as to such spirits, see note (*r*), p. 643, *ante*.

(*p*) See p. 643, *ante*.

(*q*) Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 3; Finance Act, 1902 (2 Edw. 7, c. 7), s. 5. In the case of tinctures or medicinal spirits, essences and perfumed spirits, the allowance is payable whether the goods are exported through a duty-free warehouse or direct from the premises of a rectifier or compounder; see p. 643, *ante*. If intended to be exported in cask, they must first be deposited on drawback in a duty-free warehouse for exportation (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 95 (1), (2)); and see note (*r*), p. 643, *ante*.

(*r*) Finance Act, 1895 (58 & 59 Vict. c. 16), s. 7.

(*s*) Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), ss. 1, 27. As to the Commissioners of Inland Revenue, see p. 544, *ante*.

(*t*) See Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), and

in relation to stamps to compel any person who receives such fees and duties to account for the receipts (*a*); to grant and revoke licences to deal in stamps (*b*); to frame regulations with regard to allowances for spoiled or misused stamps (*c*); to repurchase stamps which have not been spoiled or used and were legally purchased within two years before the application for repayment (*d*); to discontinue the use of an old die with or without the provision of a new one (*e*); and to issue warrants for the search of premises of persons suspected of possessing forged stamps (*f*).

Meaning of stamp duties.

1531. The term "stamp duties" as here used includes all duties collected by means of stamps; it is, however, frequently used in a narrower sense to describe the duties imposed by the Stamp Act, 1891 (*g*), or of a similar character. It is not possible to frame a logical definition which would include all the latter duties and no others; but the characteristic of most of them is that the instrument to be stamped is itself the subject-matter of taxation, whereas

pp. 544 *et seq.*, *ante*; and in respect of postage stamps, Post Office Act, 1908 (8 Edw. 7, c. 48), ss. 10, 11; see also title POST OFFICE, Vol. XXII., pp. 636, 640. By the Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 20, provision may be made by Order in Council for the exercise of certain powers and duties by the Postmaster-General either concurrently with, or to the exclusion of, the Commissioners of Inland Revenue. As to national health and unemployment insurance stamps, see the National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), s. 108; and title WORK AND LABOUR.

(*a*) Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 2. The proceedings are by writ sued out of the High Court, compliance with the terms of which may be enforced by attachment (*Re Coulson* (1894), cited in Highmore, Stamp Laws, 3rd ed., p. 18). If cause is shown, the court may make such order as seems just; as to legal proceedings, see, further, p. 737, *post*.

(*b*) Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 3.

(*c*) *Ibid.*, ss. 9—11, as amended by the Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 13; and see p. 702, *post*.

(*d*) Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 12, as amended by the Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 13.

(*e*) Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 22. Notice of the discontinuance of the use of a die is given by the Commissioners of Inland Revenue in the *London*, *Edinburgh*, and *Dublin Gazettes*, naming a day not less than one month after the publication of the notice, after which the die shall not be a lawful die for denoting the payment of duty. No instrument first executed or dated after such day, and no postal packet posted after such day, is deemed to be duly stamped if the payment is denoted by the discontinued die; but if any such instrument has been first executed outside the United Kingdom, it may be stamped with the lawful die without payment of any penalty, if presented within fourteen days of its being received in the United Kingdom. Persons having stamped material rendered useless by the discontinuance of a die may send such material to Somerset House or the head offices of the Commissioners in Dublin or Edinburgh, and the Commissioners may restamp the same material or issue other stamped material of an equal amount (*ibid.*, ss. 22, 27, as amended by the Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 10). The definition of a postal packet in the Post Office Act, 1908 (8 Edw. 7, c. 48), s. 89 (see title POST OFFICE, Vol. XXII., p. 630, note (*h*)), is applicable by virtue of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 38.

(*f*) Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 18.

(*g*) 54 & 55 Vict. c. 39.

SECT. 1. Management.

in other duties collected by means of stamps the instrument, whether it has any independent function or not, is regarded rather as a vehicle for the collection of a tax aimed at a specific object. Thus, the duties which originated as stamp duties (in the narrower sense) upon probates and letters of administration have now developed into a charge upon the devolution of property on death. The fact that, in respect of certain transactions which could formerly have been effected with or without a written instrument, the preparation of an instrument is now made obligatory for the purpose of protecting the revenue, though it obscures, does not destroy, the value of the distinction suggested above (*h*).

Dealers in stamps.

1532. No person, unless employed by the Post Office, may deal in stamps without a licence (*i*).

Allowances for spoiled or misused stamps.

1533. Any application for an allowance in respect of spoiled or misused stamps must be made within two years after the stamp has been spoiled or become useless, or, in the case of an executed instrument, within two years after the first execution, or such further time as the Commissioners may in certain cases prescribe, and before the commencement of any legal proceedings in which the instrument could have been offered in evidence. If these conditions are complied with, and the instrument or stamps delivered up, allowance is made, subject to regulations (*j*) made by the Commissioners and to the production of such evidence as they may require, in a number of cases particularly specified in the Stamp

(*h*) Compare *Minister of Stamps* v. *Townend*, [1909] A. C. 633, 639, P. C. For cross-references to various stamp duties, see note (*r*), p. 706, *post*; and as to excise duties collected by means of so-called stamps, see pp. 619, 621, *ante*.

(*i*) Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), ss. 4, 7. Such a licence is granted by the Commissioners, or any officer authorised by the Commissioners, to a particular person or firm, and in respect of a particular place or places named in the licence. The licensee must give security for £100, and, at every place where he is licensed to deal, exhibit a notice with his name and the words "Licensed to Deal in Stamps." On the purchase of stamps a discount may be allowed by the Treasury, and on the determination of the licence, the value, subject to such discount, of all stamps properly obtained and in the possession of the licensee at the time of the determination of the licence, and presented within six months of the determination, may be repaid by the Commissioners (*ibid.*, ss. 3, 5, 8, 25). Discount is now allowed only on the sale of stamps appropriated to foreign bills. For offences in connection with dealing in stamps, see p. 703, *post*.

(*j*) The Commissioners require that claims made in London should be supported by the personal attendance at Somerset House, Strand, W.C., or Telegraph Street, E.C., of the person for whose use or benefit the stamps were purchased, or of an agent appointed by him in writing. The instrument must be presented in a complete state, and adhesive stamps which have been affixed must not be detached, unless a certificate is produced from the chief officer of any court, registry or office where the original instrument has been lodged that the stamps are a fit subject for allowance. A declaration is required in all cases where the claim amounts to 10*s.* or more. A special form of declaration is required in the case of policies of insurance (other than marine); see Highmore, Stamp Laws, 3rd ed., pp. 26 *et seq.*

Duties Management Act, 1891 (*k*); but, except as provided for by that Act, no claim can be enforced (*l*).

Affidavits and statutory declarations.

1534. Any affidavit or statutory declaration to be made for the purposes of any Act relating to stamp duties may be made before any of the Commissioners or any person authorised by them in that behalf, any commissioner for oaths (*m*), justice (*n*), or notary public (*o*) in the United Kingdom, or at any place outside the United Kingdom before any person duly authorised (*p*).

SECT. 2.—*Offences in Relation to Stamps.*

Offences generally in relation to stamps.

1535. In addition to the more serious offences, which are made respectively felonies or misdemeanours (*q*), fines (*r*) in connection with stamp duties generally are imposed upon any unauthorised person dealing in stamps or exhibiting a notice importing that he is licensed so to deal (*s*); any person, whether licensed or not, who hawks stamps (*t*); any person who defaces adhesive stamps before use otherwise than as sanctioned by the Commissioners (*a*); any person who fraudulently removes, or causes to be removed, any adhesive stamp from any instrument or postal packet with intent that it should be used again, or sells, offers for sale, or uses a stamp so removed (*b*); and any person who is concerned in any

(*k*) 54 & 55 Vict. c. 38, ss. 9—11, as amended by the Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 13.

(*l*) See *National Bank of Scotland* v. *Lord Advocate* (1892), 30 Sc. L. R. 579.

(*m*) As to commissioners for oaths, see Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10); and see titles EVIDENCE, Vol. XIII., p. 627; SOLICITORS.

(*n*) As to justices, see title MAGISTRATES, Vol. XIX., pp. 535 *et seq.*

(*o*) As to notaries public, see title NOTARIES, Vol. XXI., p. 493.

(*p*) Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 24, as amended by the Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 7. As to persons so authorised, see Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10), s. 6; title EVIDENCE, Vol. XIII., pp. 628, 629. Such affidavit or statutory declaration need not itself be stamped; see p. 726, *post.*

(*q*) See title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 489, 747 *et seq.*

(*r*) The word "fine" is used in the text of both the Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), and the Stamp Act, 1891 (54 & 55 Vict. c. 39), while the word "penalty" is used in the marginal notes. This is unfortunate, as there is another description of penalty provided for by the Stamp Act, 1891 (54 & 55 Vict. c. 39), which is not recoverable except as the price of having the instrument stamped after execution; see *ibid.*, s. 15 (1), as contrasted with s. 15 (2) (c). The result of the failure to observe this distinction may be seen in a passage from the speech of Lord MACNAGHTEN in *Inland Revenue Commissioners* v. *Maple & Co. (Paris)*, reported in 77 L. J. (K. B.) 55, at p. 59, but omitted in the report in [1908] A. C. 22; and see also note (*b*), p. 707, *post.*

(*s*) Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 4. The fine is £20 for dealing, and £10 for exhibiting the notice (*ibid.*).

(*t*) *Ibid.*, s. 6; fine £20. In default of payment, upon summary conviction the offender may be imprisoned for any period not exceeding two months. Any person may arrest the offender and take him before a justice, and stamps found in his possession may be forfeited (*ibid.*).

(*a*) *Ibid.*, s. 20. Maximum fine £5.

(*b*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 9, as amended by the

SECT. 2. Offences in Relation to Stamps.

act intended to defraud the revenue and not otherwise specially provided for (*c*).

These fines are recoverable either summarily before justices (*d*) or else by information in the High Court (*e*).

Recovery of fines.

Offences in relation to instruments.

1536. Further fines in connection with the stamp duties upon instruments are imposed upon any person executing or preparing, with intent to defraud, an instrument which omits fully to set forth all the facts and circumstances affecting the liability to duty (*f*); any person required by law to cancel an adhesive stamp who neglects or refuses to do so (*g*); any person failing to stamp certain instruments (*h*), or to execute and stamp instruments in respect of

Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 7, read with the Post Office Act, 1908 (8 Edw. 7, c. 48), ss. 89, 91 (fine, £50). As to the use of adhesive stamps, see p. 714, *post*.

(*c*) Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 39), s. 21 (fine £50).

(*d*) *Ibid.*, s. 26; and see p. 737, *post*. As to courts of summary jurisdiction, see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.*

(*e*) Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 22 (1). As to the recovery of fines, see p. 737, *post*.

(*f*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 5 (fine, £10); see also *ibid.*, s. 12 (6) (c) (adjudication). It has been held under former Acts that an instrument is admissible as duly stamped where the consideration, though not set forth in the instrument, is ascertainable from other documents or facts therein referred to, and it may therefore be assumed that in such a case no fine would be recoverable (*Parry* v. *Deere* (1836), 5 Ad. & El. 551; and see *Furness Rail. Co.* v. *Inland Revenue Commissioners* (1864), 10 Jur. (N. S.) 1133, *per* POLLOCK, C.B., at p. 1134). It should also be observed that prior to the passing of the Stamp Act, 1870 (33 & 34 Vict. c. 97), duties on conveyances and leases were charged on the consideration expressed. Since 1870 the duty has been chargeable on the true consideration. Presentation for stamping with a statement of the true facts would afford evidence of no intent to defraud. A similar provision requiring a statement of the consideration for an instrument chargeable with *ad valorem* duty has been held to apply in the case of failure to state the consideration paid by a purchaser of a house to a builder who, being entitled to have a lease granted to himself or his nominee, procured the grant of the lease to the purchaser as lessee (*A.-G.* v. *Brown* (1849), 3 Exch. 662). As to the note for steward of a manor for entry on court rolls (fine, £50), see Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 66 (3) (b); and see title COPYHOLDS, Vol. VIII., p. 63; see also Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 94.

(*g*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 8 (fine, £10): and see p 714, *post*.

(*h*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 15 (2) (c), as to instruments chargeable with *ad valorem* duty included under titles "bond, conveyance on sale, lease, mortgage, settlement," in *ibid.*, Sched. I., and applied by the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 74 (3), to voluntary dispositions *inter vivos* (see p. 732, *post*). If not stamped within the time limited by that provision, the fine is £10 and is independent of the penalty payable under the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 15 (1), and the further penalty payable under *ibid.*, s. 15 (2) (c), as the price of stamping the instrument (see note (*r*), p. 703, *ante*). The persons respectively liable to the fine are specified in the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 15 (2) (d)); see Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 31, as to bank-notes (fine, £50 from the banker and £20 from the person taking the note); *ibid.*, s. 38, as to bills of exchange or promissory notes (fine, £10); *ibid.*, s. 40, as to bills of lading (fine, £50); *ibid.*, s. 78, as to leases or agreements for

certain transactions (*i*); and any person whose duty it is to enrol, register, or enter any instrument chargeable with duty who enrols, registers, or enters an instrument not duly stamped (*k*).

These fines can only be recovered by information in the High Court (*l*).

Recovery of fines.

1537. Proceedings for the recovery of fines cannot be strictly classified as either civil or criminal; they are in form civil, and the fine is recovered as a debt due to the Crown, but the liability is incurred as the punishment for an offence (*m*). The common law rules as to criminal liability are therefore inapplicable, and a master is liable for fines incurred through the acts of his servants if his knowledge or authority can be inferred (*n*), but the measure of his liability is apparently not, as in the case of certain acts prohibited by statute (*o*), so absolute as to prevent his proving non-complicity (*p*).

Nature of proceedings.

Liability of master for acts of servants.

leases within that section (fine, £5); Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 79, as to letters of allotment or renunciation and scrip certificates (fine, £20); *ibid.*, s. 80, as to proxies or voting papers (fine, £50); *ibid.*, ss. 83, 84, and Finance Act, 1899 (63 & 64 Vict. c. 9), s. 4, as to foreign or colonial government securities, made, issued, assigned, transferred, negotiated or offered for sale in the United Kingdom (fine, £20); Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 103, as to receipts (fine, £10); *ibid.*, ss. 107, 109, as amended by the Finance Act, 1899 (62 & 63 Vict. c. 9), ss. 5, 6, as to stock certificates to bearer or share warrants (fine, £50); Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 110, as to authority to transfer share in cost-book mine (fine, £20); *ibid.*, s. 111, as to warrants for goods (fine, £20).

(*i*) *Ibid.*, s. 19, as to admissions chargeable with duty (fine, £10); *ibid.*, s. 24, as to appraisements or valuations (fine, £50 from the valuer and £20 from the person receiving the valuation); *ibid.*, ss. 43, 44, as to practice as a solicitor etc. (fine, £50); Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 77—79, as to contract notes (fine, £20); Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 66, 67, as to grant or surrender of copyholds (fine, £50); *ibid.*, ss. 97, 100, as to marine or other insurance policies (fine, £100 in cases of marine policies, and £20 in others).

(*k*) *Ibid.*, s. 17 (fine, £10). As a result of this provision any such person is justified in refusing to enrol or register an instrument improperly stamped, and the proper course in order to question his decision is to present the instrument to the Commissioners for adjudication (see p. 716, *post*), and if necessary appeal, and not to apply for a mandamus to compel the enrolment or registration (*R.* v. *Registrar of Joint Stock Companies* (1888), 21 Q. B. D. 131; *Maynard* v. *Consolidated Kent Collieries Corporation, Ltd.*, [1903] 2 K. B. 121, C. A.). Special provisions relating to the duty of the registrar in relation to stamps on instruments presented for registration are contained in the statutes providing for the registration of title; see title REAL PROPERTY AND CHATTELS REAL, pp. 315 *et seq.*, *ante*.

(*l*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 121. As to the recovery of fines, see, further, p. 737, *post*.

(*m*) *Lord Advocate* v. *Thomson* (1897), 24 R. (Ct. of Sess.) 543, *per* Lord STORMONTH-DARLING, at p. 545.

(*n*) *A.-G.* v. *Carlton Bank*, [1899] 2 Q. B. 158.

(*o*) See title CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 235, note (*d*).

(*p*) *R.* v. *Dean* (1843), 12 M. & W. 39. The motive with which the course of business, in which the offence was committed, may have been adopted is not material (*A.-G.* v. *Carlton Bank*, *supra*), except in so far as the fact that the master would profit may be a ground for inferring privity on his part (*A.-G.* v. *Siddon* (1830), 1 Cr. & J. 220; and see *A.-G.* v. *Riddle* (1832), 2 Cr. & J. 493).

SECT. 3. Stamp Duties upon Instruments Generally.

SECT. 3.—*Stamp Duties upon Instruments Generally.*

The Stamp Act and its Schedule.

1538. The development of taxation has led to a large increase in the duties collected by means of stamps. The duties dealt with in the following paragraphs are those collected under the Stamp Act, 1891 (*q*), or provisions amending or analogous to that Act (*r*). The duties charged are those specified in the Schedule, the instruments therein enumerated being in many cases further defined by reference to provisions in the Act.

Consequences of failure to stamp.

1539. In some cases special penal consequences are imposed upon the failure either to stamp particular instruments (*s*) or to execute and stamp instruments in respect of particular transactions (*t*); but apart from such provisions there is no general obligation to stamp any instrument. The omission to do so is, however, visited with the consequence that, unless properly stamped, the instrument, if it is executed in the United Kingdom, or, wherever executed, relates to any property situated or any matter or thing to be done in the United Kingdom, cannot, except in criminal proceedings, be received in evidence or be available for any purpose whatever (*a*).

(*q*) 54 & 55 Vict. c. 39.

(*r*) As to the distinction between these duties and others which, being collected by means of stamps, are strictly stamp duties, though not generally referred to by that name, see pp. 701, 702, *ante*. For estate, legacy, succession and probate duties, see title ESTATE AND OTHER DEATH DUTIES, Vol. XIII., pp. 177 *et seq.*; for increment value duty, see p. 557, *ante*; for medicine stamp duties, see pp. 619 *et seq.*, *ante*; for duties on playing cards, see p. 621, *ante*; for duty on the memorandum, articles and statements of capital and loan capital of companies, see title COMPANIES, Vol. V., pp. 60, 66, 67, 355, 356, 362—364; for duty on capital contributed by limited partners, see p. 732, *post*; for duty on financial statements of local authorities, see title LOCAL GOVERNMENT, Vol. XIX., p. 288; for postage fees and duties, see title POST OFFICE, Vol. XXII., pp. 637 *et seq.*; for duty on applications and certificates under the Charitable Trustees Incorporation Act, see title CHARITIES, Vol. IV., p. 215; for duties on deeds of arrangement, see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 329; for corporation duty, see p. 734, *post*; for duties on licences to keep houses of reception for lunatics or habitual drunkards, see titles INTOXICATING LIQUORS, Vol. XVIII., p. 160; LUNATICS AND PERSONS OF UNSOUND MIND, Vol. XIX., p. 474, note (*c*); for duty on registration of alkali and other works, see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., p. 411.

(*s*) See note (*h*), p. 704, *ante*.

(*t*) See note (*i*), p. 705, *ante*.

(*a*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 14. As a result of this provision a purchaser may refuse to complete upon the ground that an instrument necessary to the vendor's title is not duly stamped (*Whiting to Loomes* (1881), 17 Ch. D. 10, C. A.), but not where the instrument is unnecessary (*Ex parte Birkbeck Freehold Land Society* (1883), 24 Ch. D. 119), and see *Re Weir and Pitt's Contract* (1911), 55 Sol. Jo. 536; and a purchaser of land subject to tenancies can insist on the leases or agreements being properly stamped (*Smith* v. *Wyley* (1852), 16 Jur. 1136; *Coleman* v. *Coleman* (1898), 79 L. T. 66); and under appropriate circumstances the court will order production of an instrument for the purpose of its being stamped (*Hall* v. *Bainbridge* (1845), 9 Jur. 451; compare *Dyke* v. *Brewer* (1849), 2 Car. & Kir. 828).

When an instrument is tendered, the court is not bound to take an objection of so doubtful a character as to raise a test case (*Don Francesco* v. *De Meo*, [1908] S. C. 7); but, where the objection is clear, it is the duty of

The terms in which this sanction is imposed may be referred to for the purpose of ascertaining the construction to be placed upon the charges imposed, so that the charge, where not otherwise restricted to the United Kingdom in respect of the place of execution or character of the subject-matter, should be read as co-extensive with the sanction (*b*).

1540. The Schedule to the Stamp Act specifies the duties which are chargeable upon certain descriptions of instruments, and occasions may arise in which an instrument falls within more than one category. The statute deals specifically with two possible cases:

Document containing several instruments: instrument relating to several matters.

(1) a document which really contains more than one instrument must be stamped separately in respect of each (*c*);

the court to take it (*Bowker* v. *Williamson* (1889), 5 T. L. R. 382; *Nixon* v. *Albion Marine Insurance Co.* (1867), L. R. 2 Exch. 338). The General Council of the Bar have expressed the opinion that it is undesirable that counsel should either object to the admissibility of any document upon the ground that it is insufficiently stamped, unless such defect goes to the validity of the document, or take part in any discussion in support of any such objection unless invited to do so by the court (see Annual Statement of the General Council of the Bar, 1901–2, p. 5; title BARRISTER, Vol. II., p. 411, note (*l*)); and the disfavour with which stamp objections are regarded is occasionally manifested by depriving the successful party of costs (*Genforsikrings Aktieselskabet (Skandinavia Reinsurance Co. of Copenhagen)* v. *Da Costa*, [1911] 1 K. B. 137, following *Home Marine Insurance Co.* v. *Smith*, [1898] 1 Q. B. 829). The ruling of a judge on a stamp objection that a document is sufficiently stamped or does not require a stamp is final (R. S. C., Ord. 39, r. 8; *Blewitt* v. *Tritton*, [1892] 2 Q. B. 327, C. A.; *Mander* v. *Ridgway*, [1898] 1 Q. B. 501; *Lowe* v. *Dorling* (1905), 74 L. J. (K. B.) 794 (county court)), but an appeal lies from a ruling rejecting a document (*Sharples* v. *Rickard* (1857), 2 H. & N. 57); see *The Belfort* (1884), 9 P. D. 215. As to the meaning of "duly stamped," see pp. 712 *et seq.*, *post*; and as to the scope of this statutory provision generally, see titles CONTRACT, Vol. VII., pp. 530, 531; EVIDENCE, Vol. XIII., pp. 515—517.

(*b*) *Inland Revenue Commissioners* v. *Maple & Co. (Paris), Ltd.*, [1908] A. C. 22. In that case the House of Lords held that the terms of the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 14 (4), showed that it was intended to include in the general charge certain conveyances executed abroad. It is submitted that the sub-section also shows that general words throughout the Act which impose a liability to duty or fines must also be read as subject to such limitation as would exclude the cases in which that sub-section would have no application. The difficulty as regards the imposition of fines suggested in the same case ([1906] 2 K. B. 834, C. A., *per* FLETCHER MOULTON, L.J., at pp. 847, 848) would thus be avoided; and see note (*r*), p. 703, *ante*. Thus, an antenuptial contract executed in Calcutta and relating to property in Calcutta requires no stamp (*Gilchrist* v. *Herbert* (1872), 20 W. R. 348), nor do receipts executed abroad relating to foreign transactions (*James* v. *Catherwood* (1823), 3 Dow. & Ry. (K. B.) 190; *Bristow* v. *Sequeville* (1850), 5 Exch. 275), but a conveyance of land in Australia executed in the United Kingdom must be stamped (*Re Wright and Inland Revenue Commissioners* (1855), 11 Exch. 458). As to shares registered in a colonial register, see title COMPANIES, Vol. V., p. 158. As to cases where special provision is made in respect of instruments executed abroad, see p. 718, *post*.

(*c*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 3 (2). As to cases of documents containing more than one instrument or relating to several and distinct matters, but bearing only one stamp, see p. 715, *post*. For special cases where exemptions are granted in respect of indorsements on

SECT. 3. Stamp Duties upon Instruments Generally.

(2) an instrument which relates to several distinct matters must, except where express provision to the contrary is made, be separately and distinctly charged in respect of each matter, and for this purpose distinct provisions constituting together the consideration for an instrument liable in respect of one of them to *ad valorem* duty are treated as separate and distinct matters (*d*). But two other cases may arise:

(3) an instrument may relate to several matters which nevertheless cannot be regarded as distinct; and

(4) an instrument, though relating substantially to one matter, may fall into one category or another, according to the view adopted of its legal operation.

Matters which are regarded as distinct, or, on the other hand, subsidiary.

The line of division between classes (2) and (3) is not easy to draw, and it should be noted with reference to many of the cases cited here and throughout this title that, although useful for illustrating principles, they are decisions upon Acts of Parliament now repealed, and, in some cases, only decisions at *nisi prius* upon the admissibility of documents, and cannot be regarded as possessing the same authority as revenue cases decided upon the Acts now in force. It is, however, well established that where a provision in an instrument is such that, even if it had not been expressed, it would have been implied by law, such a provision is not distinct and no duty is chargeable in respect of it (*e*), and that the fact that several persons join in an instrument does not make their shares

instruments already stamped, see under the several titles in the Stamp Act, 1851 (54 & 55 Vict. c. 39), Sched. I. In such cases, if the space on the original deed is exhausted, a document may be added and indorsements made on it without a further stamp being required (*Orme* v. *Young* (1815), 4 Camp. 336).

(*d*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 4 (b); and see title CONTRACT, Vol. VII., pp. 531, 532. The cases in which express provision to the contrary is made are referred to in the passages dealing with the particular instrument in question; for cross references see note (*o*), p. 724, *post*.

(*e*) *Mullett* v. *Hutchison* (1828), 7 B. & C. 639 (memorandum of deposit containing an agreement to return the deposited bills), distinguished in *Doe* d. *Frankis* v. *Frankis* (1840), 11 Ad. & El. 792; *Barry* v. *Goodman* (1837), 2 M. & W. 768 (admission by occupier that he remained on sufferance only, containing also an agreement to give up possession on demand); *Doe* d. *Scruton* v. *Snaith* (1832), 8 Bing. 146 (mortgage containing provision securing expenses which might be incurred by the mortgagee in exercise of his power of sale); *Doe d. Merceron* v. *Bragg* (1838), 8 Ad. & El. 620 (mortgage containing covenant by mortgagor to pay rates and taxes); *Wroughton* v. *Turtle* (1843), 11 M. & W. 561 (mortgage of leaseholds containing provision making any fines paid by the mortgagee upon renewal a charge on the property); *Hill* v. *Ramm* (1843), 5 Man. & G. 789 (admission of a debt in consideration of withdrawal of distress containing an agreement that in default of payment distress might be levied again); *Notley* v. *Webb* (1848), 5 C. B. 834 (agreement by party accommodated to find money to meet an accommodation bill when due); *Lawrance* v. *Boston* (1851), 7 Exch. 28 (mortgage of policy of assurance containing a provision that expenses incurred by mortgagee in obtaining a fresh policy, if necessary, should be a charge on the new policy). *Annandale* v. *Pattison* (1829), 9 B. & C. 919 (joint and several bond, executed by principal and surety, containing a covenant by the principal to indemnify the surety), is a case coming under this rule rather than that exemplified by the cases cited in note (*g*), p. 709, *post*.

in the transaction separate and distinct matters, provided that there is a community of the same subject-matter, either as to property or interest (*f*), in all the parties. There are, further, a number of cases in which various instruments, which, in respect of their leading characteristic, were either not liable to duty, or if liable were properly stamped, have been held not to be chargeable with any further duty by reason of the inclusion of provisions considered to be merely ancillary to the leading object (*g*).

(*f*) *Baker* v. *Jardine* (1784), 13 East, 235, n. (bill of sale by the crew of a privateer of their shares in prize-money); *Bowen* v. *Ashley* (1805), 1 Bos. & P. (N. R.) 274 (bond by performers in which none would have joined unless all had joined); *Davis* v. *Williams* (1811), 13 East, 232 (agreement to contribute to the cost of making a clock); *Cook* v. *Jones* (1812), 15 East, 237 (grant of an annuity); *Goodson* v. *Forbes* (1815), 6 Taunt. 171 (agreement by several underwriters to refer a dispute on a policy); *Allen* v. *Morrison* (1828), 8 B. & C. 565 (letter of attorney signed by members of a mutual insurance club); *R.* v. *Louth* (*Inhabitants*) (1828), 8 B. & C. 247 (indenture to serve one man for four years and then another for three years); *Ramsbottom* v. *Davis* (1839), 4 M. & W. 584 (agreement by three persons to indemnify a fourth to the extent of £50 each, to be paid severally); *Cooper* v. *Flynn* (1841), 3 I. L. R. 472 (lease to joint tenants); *Thomas* v. *Bird* (1841), 9 M. & W. 68 (release to an administrator by two next of kin; see, however, *Freeman* v. *Inland Revenue Commissioners* (1871), L. R. 6 Exch. 101); *Wills* v. *Bridge* (1849), 4 Exch. 193 (conveyance by three persons of a block of shares in which in fact their interests were several); *Doe d. Croft* v. *Tidbury* (1854), 14 C. B. 304 (conveyance by several encroachers upon a common in which each purported to convey the whole encroachment, though in fact their interests were several). So an admission of joint tenants of copyhold tenements was held under Acts now repealed to require only one stamp in respect of each tenement (*Traherne* v. *Gardner* (1856), 5 E. & B. 913); although a contract of demise to different tenants with a several operation requires separate stamps (*Doe* d. *Copley* v. *Day* (1811), 13 East, 241). A joint affidavit or statutory declaration, though several persons join, requires only one stamp if it relates to only one matter (*Reversionary Interest Society* v. *Inland Revenue Commissioners* (1906), 22 T. L. R. 740), but not unless it is really a joint affidavit (*Atkins* v. *Reynolds* (1822), 2 Chit. 14).

In the following cases more than one stamp was held to be necessary:—*Freeman* v. *Inland Revenue Commissioners*, *supra* (deed, whereby shares in a number of companies held by two executors were divided between them and two other residuary legatees, held to operate as a separate transfer as regards each of the four parties, but not as regards several blocks of shares transferred to one party so that four stamps and no more were required); *R.* v. *Eton College* (1846), 8 Q. B. 526 (deed containing admittances on the sale of a copyhold tenement by five tenants in common). The old cases in which it was held that if an affidavit was entitled in more than one cause as many stamps were required as there were causes (*Anon.* (1811), 3 Taunt. 469; *R.* v. *Carlisle* (1819), 1 Chit. 451) may still be referred to as illustrating the principle.

If a purchaser at an auction purchases several lots and signs only one instrument in respect of them all, the separate purchases are none the less separate and distinct matters, as to which the question whether any stamp is required must be separately determined (*Emmerson* v. *Heelis* (1809), 2 Taunt. 38; *Roots* v. *Dormer* (*Lord*) (1832), 4 B. & Ad. 77; *Watling* v. *Horwood* (1847), 12 Jur. 48).

(*g*) *Hughes* v. *King* (1815), 1 Stark. 119 (conveyance containing a penalty clause securing observance of certain stipulations by the vendor); *Stead* v. *Liddard* (1823), 1 Bing. 196 (agreement containing a guarantee by a

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As regards case (4), an instrument is not necessarily to be regarded as duly stamped because it is stamped with the duty appropriate to one category within which it falls, if upon another view of its operation it falls within another category on which a higher duty is charged (*h*); nor does an exemption granted in respect

Legal operation of instrument.

third party to secure performance); *Pratt* v. *Thomas* (1831), 4 C. & P. 554; affirmed, *sub nom. Price* v. *Thomas*, 2 B. & Ad. 218 (lease containing a covenant for rent in which a third party joined; see, however, *Wharton* v. *Walton* (1845), 7 Q. B. 474); *Meering* v. *Duke* (1828), 2 Man. & Ry. (K. B.) 121 (agreement for sale of a ship including various provisions for receiving payment of the price); *Worthington* v. *Warrington* (1848), 5 C. B. 635 (agreement for a lease containing an option to purchase at the end of the term); *Walker* v. *Giles* (1848), 6 C. B. 662, and *Barnard* v. *Pilsworth* (1849), 6 C. B. 698, n. (mortgage containing an attornment by the mortgagor to the mortgagee); *Limmer Asphalte Paving Co.* v. *Inland Revenue Commissioners* (1872), L. R. 7 Exch. 211, *per curiam*, at p. 217 (provision for payment of part of the consideration by instalments); *Kirkwood* v. *Carroll*, [1903] 1 K. B. 531, C. A., following *Yates* v. *Evans* (1892), 61 L. J. (Q. B.) 446, and overruling *Kirkwood* v. *Smith*, [1896] 1 Q. B. 582 (promissory note containing provision that no time given by the creditor to the principal debtor should affect his right against the surety); *General Accident Assurance Corporation* v. *Inland Revenue Commissioners* (1906), 8 F. (Ct. of Sess.) 477 (policy of assurance against accident containing a provision as to return of part of the premiums upon death in certain events); *Suffield* (*Lord*) v. *Inland Revenue Commissioners*, [1908] 1 K. B. 865 (mortgage containing provisions making expenses reasonably incurred in preserving the security a charge upon the property mortgaged); and see cases cited in title CONTRACT, Vol. VII., p. 540.

The following cases in which provisions were held to be "incident to the sale or conveyance of property" within the meaning of the Stamp Act, 1815 (55 Geo. 3, c. 184), Sched., tit. Conveyance, may be referred to as illustrating provisions which are not separate and distinct: *Wolseley* v. *Cox* (1841), 2 Q. B. 321 (covenant in a transfer of shares by the transferee to observe the rules of the company); *Doe* d. *Phillips* v. *Phillips* (1840), 11 Ad. & El. 796 (stipulation in a surrender for the grant of a new lease).

On the other hand, in *Brightman* v. *Inland Revenue Commissioners* (1868), 18 L. T. 412, an instrument by which land was sold to a trustee for the purchaser for three months, and the reversion conveyed to the purchaser, was held chargeable both as a lease and as a conveyance.

In the following cases provisions were held to be separate and distinct: *Coster* v. *Cowling* (1831), 7 Bing. 456 (lease reserving rent for house, and distinct rent for furniture and fixtures); *Wharton* v. *Walton* (1845), 7 Q. B. 474 (guarantee by a third party in a lease of licensed premises); *Lovelock* v. *Franklyn* (1846), 8 Q. B. 371 (covenant in a lease of one messuage to assign that and four other messuages); *Hadgett* v. *Inland Revenue Commissioners* (1877), 3 Ex. D. 46 (appointment of new trustees and conveyance of property to them); *Suffield* (*Lord*) v. *Inland Revenue Commissioners*, [1908] 1 K. B. 865 (provision in a conveyance that grantees should hold the property conveyed as security for a debt upon the terms of another indenture of mortgage). In *Lewis* v. *Inland Revenue Commissioners*, [1898] 2 Q. B. 290, it was admitted that two stamps were required for a separation deed which contained a provision securing an annuity, and a decision to that effect has been given in the county court (*Hulse* v. *Hulse* (1910), 54 Sol. Jo. 704).

(*h*) *Speyer Brothers* v. *Inland Revenue Commissioners*, [1908] A. C. 92; *Brown, Shipley & Co.* v. *Inland Revenue Commissioners*, [1895] 2 Q. B. 598, C. A. (marketable security as well as promissory note); *Chesterfield Brewery Co.* v. *Inland Revenue Commissioners*, [1899] 2 Q. B. 7, approving *dictum* of CHANNELL, J., in *West London Syndicate* v. *Inland Revenue Commissioners*, [1898] 1 Q. B. 226, at p. 240 (conveyance as well as declaration of trust); *Oettinger* v. *Cohn*, [1908] 1 K. B. 582 (promissory note as well as

of certain instruments charged in one category of the Schedule necessarily protect an instrument falling within that exemption if it also falls within another category of instruments charged (*i*), and an instrument which, according to its primary object, is liable to charge is not brought within a general exemption by the fact that it may possibly have a subsidiary operation which is protected by that exemption (*k*).

Construction of statutory provisions.

1541. In construing provisions imposing the duty strict attention must be paid to the actual words used by the legislature, but the words themselves must be understood in a "popular" sense, that is, the sense which persons conversant with the subject-matter with

bill of exchange payable at sight). The first of the above cases has been sometimes cited as an authority for the proposition that whenever an instrument falls within two categories, the Crown has a choice whether to charge it under one description or the other. Such a proposition does not cover the case of an instrument tendered as evidence, when the question of its being duly stamped or not would have to be decided without reference to any option on the part of the Crown. It is submitted that, subject to the case of an adjudication stamp (see p. 716, *post*), an instrument is not duly stamped unless stamped with the highest duty with which it can be charged, but that the generality of the proposition that whenever an instrument falls within two categories it is chargeable with the higher duty must be limited by reference to the preceding paragraph (see pp. 707 *et seq.*, *ante*), and that where the legislature has imposed a particular rate of duty on a specific and well-defined class of instruments, it is to be inferred that the intention was that that duty, and no other, should be charged on all ordinary instruments of that class, even although there may be another category wide enough to bring such instruments within its scope. Thus, in *Prudential Insurance Co.* v. *Inland Revenue Commissioners*, [1904] 2 K. B. 658, it was not even argued that the instrument in question, if it should be (as in fact it was) held to be a policy of life insurance, ought to be charged as a "bond or covenant," although it undoubtedly fell within that description. As to documents which are both assignments and bills of exchange, see also title BILLS OF EXCHANGE, PROMISSORY NOTES, AND NEGOTIABLE INSTRUMENTS, Vol. II., p. 571.

(*i*) *County of Durham Electrical Power Distribution Co.* v. *Inland Revenue Commissioners*, [1909] 2 K. B. 604, C. A. (agreement for the supply of electricity, assumed for the purposes of argument to be an agreement for the sale of goods, wares, or merchandise, held, nevertheless, liable to duty as a security, on account of a provision for quarterly payments of a minimum sum). It is to be observed that the wording of the Schedule upon which this case was decided first appeared in the Stamp Act, 1870 (33 & 34 Vict. c. 97), and that the words in the Stamp Act, 1815 (55 Geo. 3, c. 184), "exemptions from the preceding and all other stamp duties," are replaced by the word "exemptions" alone. Consequently the argument in *Horsfall* v. *Hey* (1848), 2 Exch. 778, by which PARKE, B., disposed of the suggestion that contracts for the sale of goods which also operated as conveyances might be chargeable as such, is no longer available. It is submitted, however, that the conclusion reached by PARKE, B., and also the decision in most of the cases cited in title CONTRACT, Vol. VII., p. 540, to the effect that an agreement for the sale of goods was exempt, although it included collateral matters, may be supported by reference to the principles enunciated in the preceding paragraph (see pp. 707 *et seq.*, *ante*), and that the judgments in *County of Durham Electrical Power Distribution Co.* v. *Inland Revenue Commissioners*, *supra*, must be read strictly with reference to the particular instrument under consideration, which was effective as a security, although the consumer might not take any current.

(*k*) *Deddington Steamship Co., Ltd.* v. *Inland Revenue Commissioners*, [1911] 2 K. B. 1001, C. A.

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which the statute is dealing would attribute to them (*l*), and, although no considerations as to what might be reasonable on the one hand, or oppressive on the other, can affect the conclusion (*m*), ambiguous words are construed in favour of the subject (*n*) and a liberal construction given to exemptions (*o*). The duty being imposed upon instruments and not upon transactions, the fact that it may be possible to devise a means for effecting the latter without resort to the former is no ground for straining the words of the Act in order to prevent such means of escaping liability (*p*). The court does, however, take every means of defeating an attempt to evade a general liability by a provision in a private Act of Parliament the effect of which might easily pass unnoticed (*q*).

Conditions precluding objection to insufficiency of stamp.

1542. Every condition of sale framed with a view to precluding objection or requisition upon the ground of the absence or insufficiency of the stamp upon any instrument executed after the 16th May, 1886, and every contract or undertaking for assuming or indemnifying against the liability on account of such absence or insufficiency, is void (*r*).

Construction of document in relation to the question of its appropriate stamp.

1543. The question whether an instrument is duly stamped, or as to what stamp is required, is in general determined by what appears upon the face of it to be its legal operation when first executed so as to be capable of that operation (*s*), but the court is not bound by the

(*l*) *Grenfell* v. *Inland Revenue Commissioners* (1876), 1 Ex. D. 242, *per* POLLOCK, B., at p. 248.

(*m*) *Clayton* v. *Burtenshaw* (1826), 5 B. & C. 41, *per* LITTLEDALE, J., at p. 47; *Morley* v. *Hall* (1834), 2 Dowl. 494, *per* TAUNTON, J., at p. 497; *Foley* (*Lord*) v. *Inland Revenue Commissioners* (1868), L. R. 3 Exch. 263, *per* KELLY, C.B., at p. 268; *A.-G.* v. *Carlton Bank*, [1899] 2 Q. B. 158, *per* Lord RUSSELL OF KILLOWEN, C.J., at p. 164.

(*n*) *Denn* d. *Manifold* v. *Diamond* (1825), 4 B. & C. 243, *per* BAYLEY, J., at p. 245; *R.* v. *Winstanley* (1831), 1 Cr. & J. 434, H. L., *per* Lord WYNFORD, at p. 442; *Harris* v. *Birch* (1842), 9 M. & W. 591, *per* PARKE, B., at p. 594; *Phillips* v. *Morrison* (1844), 12 M. & W. 740; *Daines* v. *Heath* (1847), 3 C. B. 938, *per* WILDE, C.J., at p. 941; *Clifford* v. *Inland Revenue Commissioners*, [1896] 2 Q. B. 187, *per* POLLOCK, B., at p. 193.

(*o*) *Warrington* v. *Furbor* (1807), 8 East, 242, *per* Lord ELLENBOROUGH, C.J., at p. 245.

(*p*) *Hankins* v. *Clutterbuck* (1848), 2 Car. & Kir. 810, *per* ROLFE, B., at p. 813; *Emanuel* v. *Robarts* (1868), 9 B. & S. 121, *per* BLACKBURN, J., at p. 127; *Inland Revenue Commissioners* v. *Angus*, *Same* v. *Lewis* (1889), 23 Q. B. D. 579, C. A.; compare *Minister of Stamps* v. *Townend*, [1909] A. C. 633, 639, P. C.

(*q*) *Great Northern, Piccadilly and Brompton Railway* v. *A.-G.*, [1909] A. C. 1.

(*r*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 117.

(*s*) *Ibid.*, s. 14 (4); *Weddall* v. *Capes* (1836), 1 M. & W. 50, *per* PARKE, B., at p. 54; *West London Syndicate* v. *Inland Revenue Commissioners*, [1898] 2 Q. B. 507, C. A., *per* A. L. SMITH, L.J., at p. 513. Thus a change in the law which takes place after an instrument has been executed but before it is presented for adjudication is immaterial (*Suffield* (*Lord*) v. *Inland Revenue Commissioners*, [1908] 1 K. B. 865); *secus* if the change takes place after an instrument has been begun, but before it has been so far completed as to be chargeable (*Abrahams* v. *Skinner* (1840), 12 Ad. & El. 763). In the case of particular instruments which only become liable to duty in certain events, the material date is the happening of the event, *e.g.*, certain marketable securities; see p. 730, *post*. An instrument

apparent tenour of an instrument, and will decide according to the real nature of the transaction, receiving, if necessary, extrinsic evidence (*t*).

incapable on the face of it of the legal operation which it purports to have requires no stamp unless otherwise liable (*R.* v. *Ridgwell* (*Inhabitants*) (1827), 6 B. & C. 665; *Mayfield* v. *Robinson* (1845), 7 Q. B. 486; *Mott* v. *Turnage* (1856), 1 F. & F. 6 (instruments requiring a seal, but executed under hand only); *Limmer Asphalte Paving Co.* v. *Inland Revenue Commissioners* (1872), L. R. 7 Exch. 211 (provision purporting to grant a monopoly)).

(*t*) Neither the form nor the name which the parties may have given to an instrument are material if not consistent with its substantial effect (*Wale* v. *Inland Revenue Commissioners* (1879), 4 Ex. D. 270 (instrument in form a fresh mortgage held as to part of the sum secured to be substantially only a transfer); *Mortgage Insurance Corporation* v. *Inland Revenue Commissioners* (1888), 21 Q. B. D. 352, C. A. (instrument described as a policy held not to be such); *Inland Revenue* v. *Oliver*, [1909] A. C. 427 (instrument held not to be a settlement though couched in the form of a trust); and see, as to cases on conveyances, title SALE OF LAND, and as to promissory notes, title BILLS OF EXCHANGE, PROMISSORY NOTES, AND NEGOTIABLE INSTRUMENTS, Vol. II., pp. 572, 573). Where, however, an instrument possesses the characteristic of a class charged in the schedule by name and not further defined, the fact that the parties have described an instrument by that name may be a reason for holding it chargeable as such, rather than under some other category which might also include it (*British India Steam Navigation Co.* v. *Inland Revenue Commissioners* (1881), 7 Q. B. D. 165). As examples of resort to extrinsic evidence, see *Vollans* v. *Fletcher* (1847), 1 Exch. 20, followed in *Willey* v. *Parratt* (1848), 3 Exch. 211, and *Moore* v. *Garwood* (1849), 4 Exch. 681, Ex. Ch. (letters of allotment shown to differ from the applications, and therefore to be inoperative); *R.* v. *Overton* (1854), Dears. C. C. 308 (entries shown to be receipts); *Don Francesco* v. *De Meo*, [1908] S. C. 7 (instrument purporting to be an agreement for sale shown to be a mere memorandum of a past transaction); compare *Horsfall* v. *Hey* (1848), 2 Exch. 778, and *Garnett* v. *Inland Revenue Commissioners* (1899), 81 L. T. 633 (where it was held that the mere use of the past tense was not sufficient to show that an instrument was merely a memorandum and not operative as a conveyance). Evidence may likewise be given to show that the stamp upon an instrument liable to *ad valorem* duty is not sufficient (*Maynard* v. *Consolidated Kent Collieries Corporation*, [1903] 2 K. B. 121, C. A. (deed of transfer); *Carr* v. *Roberts* (1831), 2 B. & Ad. 905; see *Robinson* v. *Vernon* (*Lord*) (1860), 7 C. B. (N. S.) 231, 235 (probate stamped for an amount less than the estate under the Stamp Act, 1815 (55 Geo. 3, c. 184)), or that a bill purporting to be executed abroad was in fact executed in the United Kingdom (*Bartlett* v. *Smith* (1843), 11 M. & W. 483), or that the nominal date upon an instrument is not the true date (*Clarke* v. *Roche* (1877), 3 Q. B. D. 170 (instrument executed before a change in the Stamp Act, but dated afterwards)).

The case of a post-dated cheque presents in some respects a peculiar problem and has been the subject of conflicting decisions, some of which, though inapplicable to the present law, require notice in view of the rules laid down as to the duty of the court. Under the Stamp Acts, 1791 (31 Geo. 3, c. 25) and 1815 (55 Geo. 3, c. 184), bankers' cheques payable to bearer on demand and not post-dated were exempt, and the duty on bills of exchange payable after date depended on the period; and penalties were imposed on post-dating such cheques or bills of exchange. In *Allen* v. *Keeves* (1801), 1 East, 435, and *Field* v. *Woods* (1837), 7 Ad. & El. 114, cheques payable to bearer and unstamped were refused admission upon evidence that they were post-dated. On the other hand, in a series of decisions relating to stamped bills, which are summed up in *Austin* v. *Bunyard* (1865), 6 B. & S. 687, bills were admitted although post-dated, and the broad proposition laid down that the court would only look at the instrument as it appeared when tendered in evidence. The same proposition appears in the case of *Gatty* v. *Fry* (1877), 2 Ex. D. 265, decided after

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SECT. 4.—*Regulations as to Stamping Instruments.*

Impressed stamps. Adhesive stamps.

1544. Stamp duties must be paid and denoted in accordance with regulations (*a*), and, except where express provision is made to the contrary, must be denoted by impressed as distinguished from adhesive stamps (*b*). Where one or more adhesive stamps are used, each must be cancelled in accordance with the regulations, and an instrument is not deemed to be duly stamped unless the stamps are so cancelled, or unless it is otherwise proved that the stamps were affixed thereto at the proper time (*c*). In the absence

the repeal of the provisions against post-dating by the Inland Revenue Repeal Act, 1870 (33 & 34 Vict. c. 99); and the judgments in *Royal Bank of Scotland* v. *Tottenham*, [1894] 2 Q. B. 715, C. A., are susceptible of the same meaning. It is submitted, however, that such a proposition was unnecessary to the decisions, and, being inconsistent with the principle applied in *Field* v. *Woods* (1837), 7 Ad. & El. 114, which was cited with approval by the Court of Appeal in *Maynard* v. *Consolidated Kent Collieries Corporation*, [1903] 2 K. B. 121, C. A., cannot be relied upon. The actual decisions may be supported upon the ground that a post-dated cheque has no legal operation until the date upon its face, when it becomes a bill payable on demand, and as such is properly stamped. This is consistent with *Field* v. *Woods*, *supra*, inasmuch as the exemption within which it was sought to bring the instrument in that case did not cover all bills payable on demand, but only such as were not post-dated. The above reasoning is substantially that adopted by the House of Lords in *Misa* v. *Currie* (1876), 1 App. Cas. 554.

(*a*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 2. The duties are paid by the purchase of stamped material or adhesive stamps or when the instrument is presented to the Commissioners for the purpose of being stamped. As to composition for stamp duties in certain cases, see p. 720, *post*.

(*b*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 2. The use of adhesive stamps is obligatory in the case of foreign bills of exchange and promissory notes (*ibid.*, ss. 34, 35, 38) and contract notes (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 78 (4)). The use of adhesive stamps is permitted in the case of agreements chargeable with 6*d*. (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 22), bills of exchange payable on demand (*ibid.*, ss. 34 (1), 38; Finance Act, 1899 (62 & 63 Vict. c. 9), s. 10; Revenue Act, 1909 (9 Edw. 7, c. 43), s. 10), charterparties (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 49 (2)), certified copies or extracts from any register of births etc. (*ibid.*, s. 64), leases for less than one year of a dwelling-house or part thereof, at a rent of less than £10, or of a furnished dwelling-house or apartments (*ibid.*, s. 78 (1)), letters of renunciation (*ibid.*, s. 79; Finance Act, 1899 (62 & 63 Vict. c. 9), s. 9), letters of attorney for the purpose of appointing a proxy to vote at a meeting and voting papers chargeable with 1*d*. (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 80 (2)), notarial acts and protests of a bill of exchange or promissory note (*ibid.*, s. 90), policies of insurance other than sea or life, and chargeable with 1*d*. (*ibid.*, s. 99), receipts (*ibid.*, s. 101 (2)), transfers of shares in cost-book mines (*ibid.*, s. 110), warrants for goods (*ibid.*, s. 111 (2)), and writs of resignation and *clare constat* (Titles to Land Consolidation (Scotland) Act, 1868 (31 & 32 Vict. c. 101), s. 116). Except where the use of an appropriated stamp is required (as to which see p. 716, *post*), duties of less than 2*s*. 6*d*. on instruments for which the use of an adhesive stamp is permitted may be denoted by the same stamps as are used for postage (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 7).

(*c*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 8. As to the persons required to cancel the stamps on the various instruments for which adhesive stamps must or may be used, see the enactments cited in note (*b*), *supra*. Having regard to the terms of the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 15 (see p. 717, *post*), it is conceived that the proper time for affixing

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of anything to the contrary appearing upon the face of the instrument, it is presumed that the regulations have been complied with, but the contrary may be proved (*d*). So also where it appears that an instrument has been stamped, but the stamp is obliterated, it is presumed to have been of sufficient amount (*e*).

Presumption of due stamping.

1545. The position of the stamp and the writing upon an instrument must be so related that the stamp appears upon the face of the instrument and cannot be used for or applied to any other instrument written upon the same piece of material, and where more than one instrument is written on one piece of material, each instrument must be separately stamped (*f*), but, if the number of stamps is less than is required, it may nevertheless be possible for the court to determine which are the instruments to which the stamps are applicable and to admit those instruments (*g*); and where an instrument has been executed by several parties so as to require several stamps, and the names of some have been crossed out, it is presumed that the stamps relate to the executions by those whose names have not been crossed out (*h*).

Separate stamps on one document.

Incorporation by reference.

1546. Where reference to several documents is necessary to prove what is in fact only a single transaction, so that they all really form only one instrument, it is sufficient if one of the documents is properly stamped (*i*); and it is no ground for objection to the admissibility of an instrument which is properly stamped that it refers to another instrument not properly stamped, provided that it is not sought to give the latter instrument in evidence (*k*).

the stamp, where no express provision is made, is before execution. A stamp may in general be effectively cancelled by a stamping machine, or by any mark of a defacing character (*Viale* v. *Michael* (1874), 30 L. T. 463; *M'Mullen* v. "*Sir Alfred Hickman*" *Steamship, Ltd.* (1902), 71 L. J. (CH.) 766), but it should be observed that the provision as to cancelling the stamps on contract notes is more limited (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 78 (4)). As to meaning of "writing," see Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 20.

(*d*) *Bradlaugh* v. *De Rin* (1868), L. R. 3 C. P. 286; *Marc* v. *Rouy* (1874), 31 L. T. 372; *M'Mullen* v. "*Sir Alfred Hickman*" *Steamship, Ltd.*, *supra*; *Roderick* v. *Hovil* (1811), 3 Camp. 103; and see note (*t*), p. 713, *ante*.

(*e*) *Doe* d. *Fryer* v. *Coombs* (1842), 3 Q. B. 687.

(*f*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 3. As to alterations made in instruments, see pp. 718, 719, *post*.

(*g*) *R.* v. *Reeks* (1726), 2 Ld. Raym. 1445; *Powell* v. *Edmunds* (1810), 12 East, 6; *Doe* d. *Copley* v. *Day* (1811), 13 East, 241; *Evans* v. *Pratt* (1842), 4 Scott (N. R.), 378; see *Forsyth* v. *Jervis* (1816), 1 Stark. 437; *Perry* v. *Bouchier* (1814), 4 Camp. 80. It is submitted that these decisions upon earlier statutes are applicable to the present law.

(*h*) *Waddington* v. *Francis* (1804), 5 Esp. 182.

(*i*) *Peate* v. *Dicken* (1834), 1 Cr. M. & R. 422; *Pearce* v. *Cheslyn* (1835), 4 Ad. & El. 225; *Blyth & Co.'s Case* (1872), L. R. 13 Eq. 529; *Grant* v. *Maddox* (1846), 15 M. & W. 737.

(*k*) *Duck* v. *Braddyl* (1824), M'Cle. 217. The case where two or more instruments are used to carry out what may be, nevertheless, a single transaction must be distinguished; see, for example, Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 58, 106 (1); and see *A.-G.* v. *Ross*, [1909] 2 I. R. 246, C. A. (as to counterpart or duplicate).

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1547. Where the duty payable upon an instrument depends upon the duty paid upon another instrument, the payment of the latter duty is denoted by a special stamp known as a "denoting stamp" impressed by the Commissioners upon production of both the instruments (*l*).

Denoting stamp.

Stamps of special description.

1548. Certain instruments can only be duly stamped with a stamp which is appropriated to the description of instrument to which they belong by a word or words written across the face of the stamp, and a stamp so appropriated is not available for any other description of instrument (*m*).

Adjudication.

1549. Upon compliance with the regulations and requirements which the Commissioners are authorised to make, any person may require the Commissioners to express their opinion as to whether any executed instrument, except an instrument chargeable with *ad valorem* duty and made as a security without limit (*n*), is liable to duty, and, if so, to what amount; and a voluntary disposition *inter vivos* is not duly stamped unless the Commissioners have so expressed their opinion (*o*). An instrument on which the Commissioners have expressed their opinion may not be stamped otherwise than in accordance with their assessment, but if so stamped, or adjudged not to be liable to any duty, it may be stamped with an adjudication stamp as duly stamped or as not liable (*p*). No objection relating to duty can be raised against an instrument so stamped unless the Commissioners have exceeded their powers;

(*l*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 11. The cases in which the occasion for such denoting stamps arise are:—duplicates or counterparts of instruments liable to a higher duty than 5*s.* (see *ibid.*, s. 72); securities which are collateral, substituted, or by way of further charge; simultaneous reconveyances of separate properties comprised in one mortgage security on payment thereof (see title MORTGAGE, Vol. XXI., pp. 134, 315); conveyances and leases executed in pursuance of agreements already stamped with *ad valorem* duty (see Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 59, 75; titles LANDLORD AND TENANT, Vol. XVIII., p. 398, note (*t*); SALE OF LAND); settlements effected by means of several instruments (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 105); see title SETTLEMENTS.

(*m*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 10. In cases not covered by statutory provision the power to direct the use or discontinuance of an appropriated stamp rests with the Commissioners of Inland Revenue by virtue of the Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 22; see p. 701, *ante*. The appropriated stamps now required are stamps for bills of exchange and promissory notes liable to *ad valorem* duty (impressed or adhesive, according as the instrument is drawn or made in or out of the United Kingdom) and contract notes under the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 78 (4); see titles BILLS OF EXCHANGE, PROMISSORY NOTES, AND NEGOTIABLE INSTRUMENTS, Vol. II., pp. 576—578; STOCK EXCHANGE.

(*n*) For such instruments, see Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 88, Sched. I., title "Mortgage, Bond etc."; *Suffield* (*Lord*) v. *Inland Revenue Commissioners*, [1908] 1 K. B. 865; titles BONDS, Vol. III., p. 103; MORTGAGE, Vol. XXI., pp. 135—137.

(*o*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 74; and see p. 732, *post*.

(*p*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 12. As to the need for an increment value duty stamp on certain instruments, see p. 564, *ante*.

but an objection once upheld cannot be questioned on appeal by obtaining an adjudication stamp after the trial (*q*).

Persons dissatisfied with the assessment by the Commissioners may, upon payment of the duty, appeal to the High Court within twenty-one days of the assessment. The appeal is by means of a case stated by the Commissioners, and the function of the court is to determine the duty chargeable and, if necessary, order repayment to the appellant of any excess of duty paid by him. The unsuccessful party may be ordered to pay costs (*r*).

Appeal against Commissioners' assessment.

1550. The general rule as regards the time for stamping instruments first executed in the United Kingdom is that they must be stamped before execution (*s*), but this rule is subject to certain general qualifications and to many special provisions in respect of particular instruments. The stamping of certain instruments after execution is expressly prohibited (*t*); on the other hand, certain instruments may, without any penalty, be stamped within thirty days after the first execution, if in the United Kingdom, or fourteen days after assessment by the Commissioners in accordance with the provisions in that behalf (*a*), and special regulations are made with respect to certain other instruments (*b*). Subject to such

Stamping after execution: instruments first executed in the United Kingdom.

(*q*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 12 (5); see *Prudential Mutual Assurance Investment and Loan Association* v. *Curzon* (1852), 8 Exch. 97; and see, generally, title EVIDENCE, Vol. XIII., p. 515. The Commissioners may exceed their powers by stamping as duly stamped an instrument on which they have no power to adjudicate (*Morgan* v. *Pike* (1854), 14 C. B. 473, *per* JERVIS, C.J., at p. 483), or which has been stamped after execution contrary to a statutory provision (*Vallance* v. *Forbes* (1879), 6 R. (Ct. of Sess.) 1099; *Lamberton* v. *Aiken* (1899), 2 F. (Ct. of Sess.) 189; see *The Belfort* (1884), 9 P. D. 215).

(*r*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 13; *Maxwell* v. *Inland Revenue Commissioners* (1866), 4 Macph. (Ct. of Sess.) 1121. As to costs, see *Manchester Corporation* v. *Sugden, Gresham Life Assurance Society* v. *Bishop*, [1903] 2 K. B. 171, C. A. The decision of the court is an order, and not a judgment, and therefore an appeal to the Court of Appeal must be brought within fourteen days (*Onslow* v. *Inland Revenue Commissioners* (1890), 25 Q. B. D. 465, C. A., as affected by the subsequent alterations in the rules; see R. S. C., Ord. 58, rr. 3, 15); and see title PRACTICE AND PROCEDURE, Vol. XXIII., p. 196.

(*s*) Though not expressly laid down, this rule is to be inferred from the provisions as to stamping after execution hereafter mentioned; see the text, *infra*. "Execution" with reference to instruments not under seal means signature (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 122).

(*t*) *Ibid.*, ss. 40 (1) (bills of lading), 80 (2) (letter or power of attorney or voting paper chargeable with the duty of 1*d.*, and, *semble*, contract notes; see Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 78 (4); and see note (*c*), p. 714, *ante*).

(*a*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 15 (2), as amended by the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 74 (3). The instruments to which this provision applies are instruments chargeable with *ad valorem* duty and described in the Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I., under the titles "Bond, Covenant etc.," "Conveyance on Sale," "Lease or Tack," "Mortgage, Bond etc.," "Settlement"; and also voluntary dispositions *inter vivos*; as to which, see p. 732, *post*.

(*b*) See, as to articles of clerkship, Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 26 27; bills of exchange, *ibid.*, ss. 34—38; charterparties, *ibid.*, ss. 50, 51; copies, *ibid.*, s. 63; colonial government and foreign securities, *ibid.*, s. 84; policies of sea insurance, *ibid.*, s. 95; receipts, *ibid.*, s. 102.

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express provisions any instrument may be stamped after execution upon payment of a penalty which the Commissioners have power to remit (*c*).

Instruments first executed abroad.

1551. Instruments first executed abroad, subject to any provisions expressly referring to them (*d*), may be stamped without a penalty within thirty days after their first receipt in the United Kingdom (*e*), and subsequently upon the same terms as regards payment of a penalty as instruments first executed in the United Kingdom (*f*).

Material alterations in instruments.

1552. In general any material alteration in an instrument after it is complete renders a new stamp necessary, as the effect is to make it in substance a new instrument (*g*); and, in the case of a contract, the result is that the new agreement cannot be proved for

(*c*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 15 (1), (3), (4), as amended by the Finance Act, 1895 (58 & 59 Vict. c. 16), s. 15. The practice of the Commissioners as to the exaction of the penalty in the case of instruments to which no express provisions apply is as follows :—Instruments, the execution or issue of which unstamped is made punishable by fine (see p. 704, *ante*, and note (*h*), *ibid.*), are not allowed to be stamped without penalty, but an instrument chargeable as a lease of a furnished house, and within the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 78 (1), (6), may be stamped without a penalty within fourteen days after execution. Agreements under hand only, chargeable with the fixed duty of 6*d.*, are allowed to be stamped without penalty within fourteen days after execution, and all other instruments within thirty days after execution. Such agreements or other instruments, if presented for adjudication (see p. 717, *ante*), and note (*a*), *ibid.*), within these respective times, may be stamped without penalty within fourteen days after notice of assessment on analogy of the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 15 (2), (6). In the case of an instrument containing, with reference to instruments executed before or on the 16th May, 1888, any provision which would, under the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 115 (see p. 720, *post*), be void if relating to instruments executed after that date, the full penalty is exacted; and see title CONTRACT, Vol. VII., p. 529.

(*d*) A general prohibition, not referring expressly to instruments executed abroad, is to be construed as referring only to instruments executed in the United Kingdom; see p. 717, *ante*. Thus the Stamp Act, 1870 (33 & 34 Vict. c. 97), s. 68, which corresponds to the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 51, was so construed in *The Belfort* (1884), 9 P. D. 215. The opinion expressed by LINDLEY, L.J., as to the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 80, in *Re English, Scottish and Australian Chartered Bank*, [1893] 3 Ch. 385, C. A., at pp. 411, 412, was unnecessary to the decision, and, in so far as it is based on a construction of the second sub-section inconsistent with that adopted in *The Belfort*, *supra*, in the case of the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 51, must not be considered as authoritative. On this view the Finance Act, 1907 (7 Edw. 7, c. 13), s. 9, relating to the stamping of proxies, is merely declaratory.

(*e*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 15 (3).

(*f*) *Ibid.*, s. 15 (1), (2).

(*g*) *Stephens* v. *Lowe* (1832), 2 Moo. & S. 44 (indorsement on a submission to arbitration that the parties had met by consent after the time limited for making the award); *Bacon* v. *Simpson* (1837), 3 M. & W. 78 (indorsement enlarging time for performance); and see *Schumann* v. *Weatherhead* (1801), 1 East, 537; titles CONTRACT, Vol. VII., p. 532; DEEDS AND OTHER INSTRUMENTS, Vol. X., pp. 404, 412, 413. As to special provisions with regard to bills of exchange and policies of insurance, see titles BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS, Vol. II., pp. 555, 575; INSURANCE, Vol. XVII., pp. 402, 403.

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want of a stamp, and the old agreement cannot be sued upon as it has been superseded (*h*).

Where, however, an instrument is still *in fieri*, an alteration may be made without rendering a new stamp necessary (*i*), but an instrument is not necessarily *in fieri* because execution by another party is still required (*k*). No further stamp is required if the alteration is immaterial (*l*) or merely declaratory (*m*), or to render certain a point left open (*n*), or made to correct a mistake (*o*) or by a stranger (*p*). Where an instrument has been altered, the general presumption is that the alteration was made before execution (*q*).

Alterations not rendering restamping necessary.

1553. Restamping is also necessary in the case of an instrument which has been used once and is thereafter applied to a new purpose (*r*); and a security for an unlimited amount stamped to

Instrument used once applied to new use.

(*h*) *Hill* v. *Patten* (1807), 8 East, 373; *French* v. *Patton* (1808), 9 East, 351; *Reed* v. *Deere* (1827), 7 B. & C. 261; but see *Robson* v. *Hall* (1792), Peake, 172 [127].

(*i*) *Hall* v. *Chandless* (1827), 4 Bing. 123; *Jones* v. *Jones* (1833), 1 Cr. & M. 721 (alteration in instrument after execution by some of the parties, but before execution by others, and with the consent of all); *Matson* v. *Booth* (1816), 5 M. & S. 223 (addition of name of another obligor to a bail bond with consent of prior obligors and the sheriff, before acceptance by the latter); *Spicer* v. *Burgess* (1834), 1 Cr. M. & R. 129 (name of a second witness added to a release (to validate evidence under old law) before delivery to either witness); *Kennerly* v. *Nash* (1816), 1 Stark. 452; *Johnson* v. *Marlborough* (*Duke*) (1818), 2 Stark. 313; *Downes* v. *Richardson* (1822), 5 B. & Ald. 674; *Sherrington* v. *Jermyn* (1828), 3 C. & P. 374; *Tarleton* v. *Shingler* (1849), 7 C. B. 812 (bills of exchange altered before issue); and see, further, titles BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS, Vol. II., pp. 555, 575; DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 413.

(*k*) *London and Brighton Rail. Co.* v. *Fairclough* (1841), 2 Man. & G. 674.

(*l*) *Hartley* v. *Manson* (1842), 4 Man. & G. 172 (addition of descriptive words after the name of one of the parties). As to immaterial alterations in instruments, see titles CONTRACT, Vol. VII., p. 426; DEEDS AND OTHER INSTRUMENTS, Vol. X., pp. 415, 416.

(*m*) *Doe* d. *Waters* v. *Houghton* (1827), 1 Man. & Ry. (K. B.) 208.

(*n*) *Taylor* v. *Parry* (1840), 1 Man. & G. 604; *Sadgrove* v. *Bryden*, [1907] 1 Ch. 318; *Barker* v. *Aston* (1858), 1 F. & F. 192.

(*o*) *Cole* v. *Parkin* (1810), 12 East, 471; and see titles BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS, Vol. II., pp. 555, 576; INSURANCE, Vol. XVII., pp. 402, 403.

(*p*) *Henfree* v. *Bromley* (1805), 6 East, 309. This does not apply to bills of exchange; and see note (*q*), *infra*. As to alterations made by strangers, see titles CONTRACT, Vol. VII., pp. 424, 425; DEEDS AND OTHER INSTRUMENTS, Vol. X., pp. 413, 414.

(*q*) 12 Vin. Abr. 58, citing *Trowel* v. *Castle* (1661), 1 Keb. 21; *Doe* d. *Tatum* v. *Catomore* (1851), 16 Q. B. 745. But in the case of a bill of exchange the burden of proving that the alteration has not vitiated the stamp lies on the party suing on the bill (*Knight* v. *Clements* (1838), 8 Ad. & El. 215; *Bishop* v. *Chambre* (1827), 3 C. & P. 55). If the bill has been executed abroad, where the alteration could be made before the stamp was affixed, the burden of proof is shifted on to the objector (*Hamelin* v. *Bruck* (1847), 9 Q. B. 306); and see title BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS, Vol. II., p. 557.

(*r*) *Plimley* v. *Westley* (1836), 2 Bing. (N. C.) 249 (non-negotiable instrument); *Hammond* v. *Foster* (1794), 5 Term Rep. 635 (redeemable annuity

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cover an advance of a definite amount must be restamped when used for any further advance (*s*).

1554. The stamp duties which would be chargeable upon the transfer of any stock of the Government of Canada which may be inscribed in books kept in the United Kingdom, or of any colonial stock to which the Colonial Stock Act, 1877 (*t*), applies, or of any foreign state or government which is inscribed in the books of the Bank of England, or of the stock of any British protectorate or protected state to which the Secretary of State applies the Colonial Stock Acts, 1877 (*t*) and 1892 (*a*), are to be paid by a composition, and the transfers are thereupon exempt (*b*).

Composition: (1) in respect of transfers of inscribed stocks;

(2) in respect of local stocks and foreign securities;

The duties on transfers of the stock or funded debt of any county council, corporation, or company may also be compounded for by agreement with the Commissioners of Inland Revenue (*c*); and the duties upon foreign securities (*d*) may be paid in one sum in lieu of stamping each security (*e*).

(3) insurance policies;

A composition may also be paid in respect of the duties upon policies of insurance against accident (*f*), sickness or incapacity, from personal injury (*g*), and loss or damage of or to property (*h*).

(4) East Indian securities;

The Treasury (*i*) may agree to accept an annual sum by way of composition for various East India bonds, debentures, bills and capital stock (*k*).

regranted after redemption). As to the reissue of bank-notes, see Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 30. As to the reissue of debentures, or debenture stock, see Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 104; title COMPANIES, Vol. V., pp. 355, 356.

(*s*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 88 (2).

(*t*) 40 & 41 Vict. c. 59.

(*a*) 55 & 56 Vict. c. 35.

(*b*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 114, as extended by the Finance Act, 1894 (57 & 58 Vict. c. 30), s. 39), and the Finance Act, 1898 (61 & 62 Vict. c. 10), s. 5.

(*c*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 115.

(*d*) Defined *ibid.*, ss. 82, 83.

(*e*) Finance Act, 1895 (58 & 59 Vict. c. 16), s. 14.

(*f*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 116.

(*g*) Finance Act, 1896 (59 & 60 Vict. c. 28), s. 13.

(*h*) Finance Act, 1907 (7 Edw. 7, c. 13), s. 8.

(*i*) As to the meaning of "the Treasury," see title CONSTITUTIONAL LAW, Vol. VII., p. 100; and see pp. 539, 540, *ante*.

(*k*) The original provision relating to bonds and securities issued by the East India Company is contained in the Stamp Duties Act, 1835 (5 & 6 Will. 4, c. 64), and is applied, as if re-enacted, in the following Acts relating to East India loans:—East India Loan Act, 1859 (22 Vict. c. 11); East India Loan (No. 2) Act, 1859 (22 & 23 Vict. c. 39); East India Loan Acts, 1860 (23 & 24 Vict. c. 130); 1861 (24 & 25 Vict. c. 25); 1869 (32 & 33 Vict. c. 106); 1873 (36 & 37 Vict. c. 32); 1874 (37 & 38 Vict. c. 3); 1877 (40 & 41 Vict. c. 51); 1879 (42 & 43 Vict. c. 60); East India Loan (East Indian Railway Debentures) Act, 1880 (43 Vict. c. 10); East India Loan Act, 1885 (48 & 49 Vict. c. 28); Oude and Rohilkund Railway Purchase Act, 1888 (51 & 52 Vict. c. 5); South Indian Railway Purchase Act, 1890 (53 & 54 Vict. c. 6); East India Loan Acts, 1893 (56 & 57 Vict. c. 70); 1898 (61 & 62 Vict. c. 13); East India Loan (Great Indian Peninsular Railway Debentures) Act, 1901 (1 Edw. 7, c. 25); East India Loans Act, 1908 (8 Edw. 7, c. 54); East India Loans (Railways and Irrigation) Act, 1910 (10 Edw. 7, c. 5).

A composition proportional to the amount of the issue of post bills, and fixed composition in respect of the issue of bank-notes, is payable by the Bank of England (*l*). The composition for the issue of notes and bills by licensed bankers in England is proportional to the issue (*m*).

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(5) bank-notes and bankers' bills.

SECT. 5.—*Exemptions from Stamp Duties.*

Classification.

1555. The exemptions from stamp duties fall into three classes:

(1) general exemptions from all stamp duties as provided by the Stamp Act, 1891 (*n*);

(2) special exemptions from the duty imposed on certain classes of instruments (*o*), granted in favour of particular instruments falling within those classes by the Stamp Act, 1891 (*n*), or other revenue Acts (*p*);

(3) special exemptions contained in Acts relating primarily to objects other than revenue, and made in favour of certain instruments created in pursuance of those objects (*q*).

Construction and burden of proof.

1556. Exemptions are to be construed liberally (*r*), but the burden of proof lies on the party who seeks to bring an instrument within an exemption (*s*); and general words in an exemption contained in a statute not relating primarily to revenue must be construed with reference to the object of that statute (*t*).

General exemptions: class (1).

1557. General exemptions (*u*) are granted in respect of transfers of shares in Government or parliamentary stocks or funds; instruments for the disposition of ships or any share or interest in ships, a description which includes a mortgage of the freight (*a*), but not a debenture secured by the mortgage of a ship (*b*);

(*l*) Stamp Act, 1815 (55 Geo. 3, c. 184), ss. 21, 22; Bank Charter Act, 1844 (7 & 8 Vict. c. 32), s. 7; Bank of England Act, 1861 (24 & 25 Vict. c. 3), s. 4.

(*m*) Bank Notes Act, 1828 (9 Geo. 4, c. 23), s. 7; and see title BANKERS AND BANKING, Vol. I., p. 573.

(*n*) 54 & 55 Vict. c. 39; see the text, *infra*.

(*o*) *E.g.*, an agreement relating to the sale of goods; see titles CONTRACT, Vol. VII., p. 538; SALE OF GOODS; and see note (*o*), p. 724, *post*.

(*p*) These exemptions are referred to in the titles dealing with the particular instruments; for references, see note (*o*), p. 724, *post*. As to the scope of these exemptions, see note (*i*), p. 711, *ante*.

(*q*) See pp. 722, 723, *post*.

(*r*) See cases cited in note (*o*), p. 712, *ante*.

(*s*) *R.* v. *Skeffington* (*Inhabitants*) (1820), 3 B. & Ald. 382, *per* BAYLEY, J., at p. 386; *Chanter* v. *Dickinson* (1843), 5 Man. & G. 253, *per* TINDAL, C.J., at p. 260.

(*t*) *Re Royal Liver Friendly Society* (1870), L. R. 5 Exch. 78 (security in which funds of a friendly society are invested held not to be exempt under the Friendly Societies Act, 1855 (18 & 19 Vict. c. 63), s. 37, now repealed and replaced by the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 33); *A.-G.* v. *Phillips* (1871), 19 W. R. 1146 (receipt given on behalf of a building society merely in the capacity of landlord held not exempt under the provisions of stat. (1829) 10 Geo. 4, c. 56, s. 37, and stat. (1836) 6 & 7 Will. 4, c. 32, s. 4); *A.-G.* v. *Gilpin* (1871), L. R. 6 Exch. 193 (drafts payable to bearer sent to holders of shares in a building society held not exempt under the last-mentioned Acts).

(*u*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I., at the end.

(*a*) *Willis* v. *Palmer* (1859), 7 C. B. (N. S.) 340.

(*b*) *Deddington Steamship Co., Ltd.* v. *Inland Revenue Commissioners*, [1911] 2 K. B. 1001, C. A.

SECT. 5. Exemptions from Stamp Duties.

instruments of apprenticeship, bonds, contracts, and agreements entered into in the United Kingdom relating to services in various capacities (*c*) in the British Dominions; testaments, testamentary dispositions, and dispositions *mortis causâ* in Scotland; replevin bonds and assignments thereof in Ireland; instruments made by, to, or with the Commissioners of Works for any of the purposes of the Commissioners of Works Act, 1852 (*d*).

Special exemptions in Acts not relating to revenue: class (3).

1558. The exemptions contained in Acts not relating to revenue are of a very miscellaneous character. Many of them relate to matters in which the Crown or the Executive is concerned (*e*), or

(*c*) For the construction of the term "artificer" reference may be made to *Bishop* v. *Letts* (1858), 1 F. & F. 401, and of "labourer" to *R.* v. *Wortley* (1851), 2 Den. 233; *Wilson* v. *Zulueta* (1849), 14 Q. B. 405, decided on the Stamp Act, 1815 (55 Geo. 3, c. 184); and see also Stroud's Judicial Dictionary, tits. "Artificer" and "Labourer"; and titles FACTORIES AND SHOPS, Vol. XIV., p. 524; MASTER AND SERVANT, Vol. XX., pp. 78, 147, note (*o*); and as to the exemption, see also titles CONTRACT, Vol. VII., pp. 538, 539; MASTER AND SERVANT, Vol. XX., pp. 78—81.

(*d*) 15 & 16 Vict. c. 28; and see title CONSTITUTIONAL LAW, Vol. VII., pp. 136, 137.

(*e*) Instruments relating to the property of the Crown are chargeable except where express provision to the contrary is made (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 119). The exemptions are contained in the Crown Lands Acts, 1829 (10 Geo. 4, c. 50), s. 77; 1845 (8 & 9 Vict. c. 99), s. 5; 1852 (15 & 16 Vict. c. 62), s. 2; and 1866 (29 & 30 Vict. c. 62), s. 10; and, as to the Duchy of Lancaster, in stat. (1779) 19 Geo. 3, c. 45, s. 10; and stat. (1808) 48 Geo. 3, c. 73, s. 30; see, further, title CONSTITUTIONAL LAW, Vol. VII., pp. 154, 167, 175, 176. Exemptions of instruments in connection with pay etc. in the navy are contained in the Naval Agency and Distribution Act, 1864 (27 & 28 Vict. c. 24), s. 16; Naval and Marine Pay and Pensions Act, 1865 (28 & 29 Vict. c. 73), s. 6. The Chelsea and Kilmainham Hospitals Act, 1826 (7 Geo. 4, c. 16), s. 39, and the Pensions and Yeomanry Pay Act, 1884 (47 & 48 Vict. c. 55), s. 5, contain exemptions of certain instruments made in relation to pensions, but the provisions of the latter with reference to the auxiliary forces are not applicable (Territorial and Reserve Forces Act, 1907 (7 Edw. 7, c. 9), s. 28); and see, further, title ROYAL FORCES. As to documents in relation to prize money, see Indian Prize Money Act, 1866 (29 & 30 Vict. c. 47), s. 8; Army Prize Money Act, 1832 (2 & 3 Will. 4, c. 53), s. 44. The Military Forces Localization Act, 1872 (35 & 36 Vict. c. 68), s. 12, and the Barracks Act, 1890 (53 & 54 Vict. c. 25), s. 11, exempt contracts, conveyances, and other documents made in pursuance of those Acts respectively; and see, further, titles CONSTITUTIONAL LAW, Vol. VI., p. 445; PRIZE LAW AND JURISDICTION, Vol. XXIII., p. 293; ROYAL FORCES. Exemptions in respect of various documents in relation to the revenue are contained in the Government Annuities Act, 1829 (10 Geo. 4, c. 24), s. 38; the Government Annuities Act, 1832 (2 & 3 Will. 4, c. 59), s. 16; the Government Annuities Act, 1853 (16 & 17 Vict. c. 45), s. 29; the National Debt Act, 1870 (33 & 34 Vict. c. 71), s. 71, the provisions of which are applied to the War Loan Act, 1900 (63 & 64 Vict. c. 2), s. 4 (2); the Supplemental War Loan Act, 1900 (63 & 64 Vict. c. 61); Supplemental War Loan (No. 2) Act, 1900 (64 Vict. c. 1) (see note (*k*), p. 753, *post*); the Legacy Duty Act, 1796 (36 Geo. 3, c. 52), s. 41 (see title ESTATE AND OTHER DEATH DUTIES, Vol. XIII., p. 256); the Land Tax Redemption Acts, 1802 (42 Geo. 3, c. 116,) ss. 68, 81, 107, 173, and 1805 (45 Geo. 3, c. 77), s. 1 (see title LAND TAX, Vol. XVIII., pp. 324, 327); the Excise Permit Act, 1832 (2 & 3 Will. 4, c. 16), s. 6; the Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 179; the Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 78; the Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), s. 13; the Stamp

municipal bodies (*f*), or courts of law (*g*), or bodies on whom privileges are conferred by the legislature, such as building societies (*h*), friendly societies (*i*), loan societies (*k*), savings banks (*l*), and the Established Churches of England and Scotland (*m*); others are provided in respect of documents created in pursuance of Acts relating to various matters of administration or procedure (*n*).

Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 3. As to the Post Office, see Telegraph Act, 1869 (32 & 33 Vict. c. 73), s. 22, and Post Office Act, 1908 (8 Edw. 7, c. 48), s. 38; and title POST OFFICE, Vol. XXII., p. 629. The Cunard Agreement (Money) Act, 1904 (4 Edw. 7, c. 22), s. 2, exempts certain instruments made in pursuance of that Act.

(*f*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 45, 168, 209; Local Loans Act, 1875 (38 & 39 Vict. c. 83), s. 19; and see note (*n*), *infra*.

(*g*) Levy of Fines Act, 1822 (3 Geo. 4, c. 46), s. 9; Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 31; Review of Justices Decisions Act, 1872 (35 & 36 Vict. c. 26), s. 2; Sheriffs Act, 1887 (50 & 51 Vict. c. 55), ss. 26, 30; and see R. S. C., Ord. 34, r. 6.

(*h*) See title BUILDING SOCIETIES, Vol. III., p. 372.

(*i*) See title FRIENDLY SOCIETIES, Vol. XV., p. 161.

(*k*) Loan Societies Act, 1840 (3 & 4 Vict. c. 110), ss. 9, 12, 14; and see title LOAN SOCIETIES, Vol. XIX., pp. 219, 221, 222.

(*l*) Trustee Savings Banks Act, 1863 (26 & 27 Vict. c. 87), s. 50; and, as to such banks, see title BANKERS AND BANKING, Vol. I., pp. 576 *et seq.*

(*m*) Clergy Residences Repair Act, 1776 (17 Geo. 3, c. 53), s. 15, which is applicable to the Clergy Residences Repair Act, 1780 (21 Geo. 3, c. 66); Clergy Residence Act, 1826 (7 Geo. 4, c. 66); Parsonages Acts, 1838 (1 & 2 Vict. c. 23), and 1865 (28 & 29 Vict. c. 69); Ecclesiastical Dilapidations Act, 1871 (34 & 35 Vict. c. 43); Incumbents of Benefices Loans Extension Act, 1881 (44 & 45 Vict. c. 25); Church Building Act, 1822 (3 Geo. 4, c. 72), s. 28, applicable to the Church Building Acts, 1824 (5 Geo. 4, c. 103), 1831 (1 & 2 Will. 4, c. 38), 1838 (1 & 2 Vict. c. 107), 1840 (3 & 4 Vict. c. 60), and 1851 (14 & 15 Vict. c. 97); Places of Worship Sites Act, 1873 (36 & 37 Vict. c. 50); Consecration of Churchyards Act, 1867 (30 & 31 Vict. c. 133), s. 6; Teinds Act, 1810 (50 Geo. 3, c. 84), s. 22. As to such matters, see, generally, title ECCLESIASTICAL LAW, Vol. XI., pp. 728 *et seq.*, 753 *et seq.*

(*n*) See as to bankruptcy, title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 323, 324; registration of deeds, title REAL PROPERTY AND CHATTELS REAL, pp. 301 *et seq.*, *ante*; registration of title, title SALE OF LAND; tithes, title ECCLESIASTICAL LAW, Vol. XI., pp. 742 *et seq.*; and see Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 163 (see title COMMONS AND RIGHTS OF COMMON, Vol. IV., p. 548, note (*e*)); Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 58 (see title COPYHOLDS, Vol. VIII., p. 124); Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), s. 47; Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 13 (see title REGISTRATION OF BIRTHS, MARRIAGES, AND DEATHS, p. 440, note (*d*), *ante*); Vaccination Act, 1907 (7 Edw. 7, c. 31), s. 1 (see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., p. 476). Exemptions relating to local government are contained in the Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), s. 86 (see title POOR LAW, Vol. XXII., p. 536); Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 61 (see *Banbury Union* (*Guardians*) v. *Robinson* (1843), 4 Q. B. 919); Parish Property and Parish Debts Act, 1842 (5 & 6 Vict. c. 18), s. 9; Public Money Drainage Act, 1846 (9 & 10 Vict. c. 101), s. 47; and the Highway Act, 1835 (5 & 6 Will. 4, c. 50), ss. 9, 37.

The following Acts regulating trades or industries contain exemptions:—Carriers Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 68), s. 3 (see title CARRIERS, Vol. IV., p. 24, note (*k*)); London Hackney Carriages Act, 1843 (6 & 7 Vict. c. 86), s. 23 (see title STREET AND AERIAL TRAFFIC); Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 108, 196, 309, 320, 342, 395, 563, 721 (see title SHIPPING AND NAVIGATION); Pawnbrokers Act, 1872

SECT. 6. Duties upon Particular Instruments.

SECT. 6.—*Duties upon Particular Instruments* (*o*).

1559. Stamp duty is charged upon instruments or memoranda of

Admissions.

(35 & 36 Vict. c. 93), ss. 15, 24 (see title PAWNS AND PLEDGES, Vol. XXII., p. 251); Truck Act, 1896 (59 & 60 Vict. c. 44), s. 7 (see title FACTORIES AND SHOPS, Vol. XIV., p. 522); Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), s. 37 (see title WEIGHTS AND MEASURES); Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 19 (see title ELECTRIC LIGHTING AND POWER, Vol. XII., pp. 615, 616).

Voting papers used at University elections are exempted; see University Elections Act, 1861 (24 & 25 Vict. c. 53); Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 45; Representation of the People (Scotland) Act, 1868 (31 & 32 Vict. c. 48). As to the memorandum required by Lord Tenterden's Act, see title CONTRACT, Vol. VII., p. 538.

(*o*) The instruments charged in the Schedule to the Stamp Act, 1891 (54 & 55 Vict. c. 39), are enumerated alphabetically, and where no other reference is given in the notes it is to be understood that the reference is to the Schedule under the title of the instrument. The stamp duties on the following instruments, being treated in other titles, are not dealt with here :—.

agreements; see titles CONTRACT, Vol. VII., pp. 529 *et seq.*; MASTER AND SERVANT, Vol. XX., pp. 78, 79; and as to agreements specifically charged, see the text, *infra*: agreements for lease; see title LANDLORD AND TENANT, Vol. XVIII., pp. 377, 396 *et seq.*: agreements for the supply of electricity; see title ELECTRIC LIGHTING AND POWER, Vol. XII., p. 615: agreement for sale of land; see title SALE OF LAND: agreement pursuant to Highway Acts; see title HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., p. 112:

allotment, letter of; see title COMPANIES, Vol. V., p. 176, and Revenue Act, 1909 (9 Edw. 7, c. 43), s. 9:

appointment; see titles SETTLEMENTS; TRUSTS AND TRUSTEES; and see p. 734, *post*:

appointment or deputation of a gamekeeper; see title GAME, Vol. XV., p. 241:

appraisement or valuation; see title VALUERS AND APPRAISERS:

apprenticeship, instrument of; see titles CHARITIES, Vol. IV., p. 215; MASTER AND SERVANT, Vol. XX., pp. 80, 81:

articles of clerkship; see title SOLICITORS:

award; see title ARBITRATION, Vol. I., p. 470:

bank-note; see title BANKERS AND BANKING, Vol. I., pp. 571, 573:

bill of exchange; see title BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS, Vol. II., p. 570:

bill of lading; see title SHIPPING AND NAVIGATION:

bill of sale; see title BILLS OF SALE, Vol. III., p. 76:

bond or covenant; see title BONDS, Vol. III., p. 103; and as to bonds specifically charged under other names, see the text, *infra*, and note (*h*), p. 710, *ante*: bonds given in respect of customs or excise duties; see note (*s*), p. 590, *ante*:

certificate for practising as a solicitor or notary; see titles NOTARIES, Vol. XXI., p. 497; SOLICITORS:

charterparty; see title SHIPPING AND NAVIGATION:

cheque; see title BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS, Vol. II., p. 570:

contract note; see title STOCK EXCHANGE:

conveyance; see titles EASEMENTS AND PROFITS À PRENDRE, Vol. XI., p. 275; MORTGAGE, Vol. XXI., pp. 134 *et seq.*, 291, 295; SALE OF LAND; SETTLEMENTS; STOCK EXCHANGE:

copyhold, surrender etc.; see title COPYHOLDS, Vol. VIII., pp. 17, 63:

debenture; see titles COMPANIES, Vol. V., p. 362; MORTGAGE, Vol. XXI., pp. 134 *et seq.*:

declaration of trust or use; see title TRUSTS AND TRUSTEES:

docket made on passing any instrument under the Great Seal; see title CONSTITUTIONAL LAW, Vol. VII., p. 11:

admission (*p*) of any person as a barrister-at-law (*q*), as a member of one of the four Inns of Court (*r*), as a solicitor of the Supreme

grants or licences under the Great Seal or Sign Manual; see titles CONSTITUTIONAL LAW, Vol. VI., pp. 478, 493 (generally), 398 (in connexion with appointments of bishops and archbishops); Vol. VII., p. 17 (honours and dignities); NAME AND ARMS, CHANGE OF, Vol. XXI., p. 354:

grant of custody of person or estate of a lunatic; see title LUNATICS AND PERSONS OF UNSOUND MIND, Vol. XIX., p. 419:

guarantee; see title GUARANTEE, Vol. XV., pp. 472, 473:

lease or tack; see titles LANDLORD AND TENANT, Vol. XVIII., pp. 377, 396; EASEMENTS AND PROFITS À PRENDRE, Vol. XI., p. 275:

letter of allotment or renunciation; see "allotment," p. 724, *ante*:

letter of credit; see title BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS, Vol. II., p. 570:

letters of marque and reprisal; see title SHIPPING AND NAVIGATION:

licence for marriage; see title HUSBAND AND WIFE, Vol. XVI., p. 292;

licences in respect of various ecclesiastical matters; see title ECCLESIASTICAL LAW, Vol. XI., pp. 476, 478, 636, 638, 645:

memorial relating to the public registration of deeds; see title REAL PROPERTY AND CHATTELS REAL, pp. 301 *et seq.*, *ante*:

mortgage; see title MORTGAGE, Vol. XXI., pp. 134 *et seq.*, 291, 315:

notarial act; see title NOTARIES, Vol. XXI., p. 497:

passports; see title CONSTITUTIONAL LAW, Vol. VI., p. 439:

policy; see title INSURANCE, Vol. XVII., pp. 338, 516:

promissory note; see title BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS, Vol. II., p. 570, note (*a*):

protest of any bill of exchange; see title BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS, Vol. II., pp. 536, 579:

proxy or voting paper; see title COMPANIES, Vol. V., p. 258:

receipt; see title CONTRACT, Vol. VII., pp. 452, 453:

revocation of any use or trust; see title TRUSTS AND TRUSTEES:

settlement; see title SETTLEMENTS:

transfer of share in cost-book mine; see title COMPANIES, Vol. V., p. 657:

valuation; see title VALUERS AND APPRAISERS:

The duties upon the following instruments not specifically dealt with may be ascertained by reference to the titles in the Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I.:—Commission of lunacy (duty 5*s.*) deed or instrument of procuration (duty 10*s.*), warrant under the Sign Manual (see title CONSTITUTIONAL LAW, Vol. VII., pp. 9 *et seq.*).

Sweeping charges designed to cover classes of instruments, particular examples of which are otherwise charged, may be found under the titles in the Schedule:—Deeds (for definition of deeds, see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 357), covenant, faculty, release, surrender, warrant of attorney; and see Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 120.

The duties upon the following instruments enumerated in the Schedule have been entirely repealed:—

admissions to the degree of doctor of medicine in either University of Scotland (Finance Act, 1895 (58 & 59 Vict. c. 16), s. 10):

certificates for enabling an importer of goods to obtain a drawback on exportation (Finance Act, 1907 (7 Edw. 7, c. 13), ss. 11, 30):

commissions to an officer in the navy, army or marines (Revenue Act, 1903 (3 Edw. 7, c. 46), ss. 9, 17):

delivery orders (Finance Act, 1905 (5 Edw. 7, c. 4), ss. 5, 8).

(*p*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I., title "Admission." The duty is to be denoted upon the instrument of admission, or, if there is no such instrument, then upon the register, entry, or memorandum, and if there is no register, entry, or memorandum, then on the rescript or warrant for admission (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 18); a penalty is imposed for failure to make a duly stamped document or entry upon the person whose office it is to do so (*ibid.*, s. 19).

(*q*) See title BARRISTERS, Vol. II., p. 362—364.

(*r*) *Ibid.* On admission to King's Inn of a person previously admitted to

SECT. 6. Duties upon Particular Instruments.

Court (*s*), as a notary public (*t*), as a fellow of the Royal College of Physicians (*a*), as a burgess or otherwise into any corporation or company in any city, borough, or town corporate (*b*).

Affidavits or statutory declarations.

1560. Affidavits or statutory declarations (*c*) are liable to a duty of 2*s.* 6*d.*; exemptions are, however, granted in respect of affidavits made for the immediate purpose of being filed, read, or used in any court or the Land Registry (*d*), affidavits or declarations required by law or by Revenue Commissioners or officers (*e*), or by the Banks of England and Ireland to prove the death of, or to identify the proprietor of any stock transferable there, or to remove any other impediment to such transfer, or relating to the loss, mutilation, or defacement of any bank-note or bank post bill, declarations required to be made pursuant to any Act relating to marriages in order to a marriage without licence, and declarations forming part of an application for a patent under the Patents and Designs Act, 1907 (*f*).

Attorney, power of.

1561. The general charge upon a letter or power of attorney, or other instrument in the nature thereof (*g*) is 10*s.*, but instruments for certain special purposes are variously charged (*h*). Although a

an English Inn, the duty on the latter admission may be recovered if claimed within six months (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 21).

(*s*) See title SOLICITORS.

(*t*) See title NOTARIES, Vol. XXI., p. 497.

(*a*) As to this body, see title MEDICINE AND PHARMACY, Vol. XX., pp. 309 *et seq.*

(*b*) The duty is £3, unless the person is admitted in respect of birth, apprenticeship, or marriage, in which case it is £1. Admissions to the freedom of the City of London by redemption and to the Company of Watermen and Lightermen of the River Thames are exempt. An admission of more than one person upon a single stamp has been held good as regards the first person named, but void as to the others (*R.* v. *Reeks* (1726), 2 Ld. Raym. 1445, which is probably the case referred to by ASHHURST, J., in *Gilby* v. *Lockyer* (1779), 1 Doug. (K. B.) 217).

(*c*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I., title "Affidavit." "Affidavit" includes "declaration" as regards all persons entitled to affirm or declare instead of swearing, and "statutory declaration" means a declaration made by virtue of the Statutory Declarations Act, 1835 (5 & 6 Will. 4, c. 62) (Interpretation Act, 1889 (52 & 53 Vict. c. 63), ss. 3, 21). The expression does not include a memorandum of a parol statement made upon oath (*Dunn* v. *Lowe* (1827), 4 Bing. 193). As to affidavits sworn to by more than one person or relative to separate matters, see note (*f*), p. 709, *ante*.

(*d*) Land Transfer Rules, 1903, r. 327.

(*e*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I., as amended by the Finance Act, 1907 (7 Edw. 7, c. 13), s. 6.

(*f*) 7 Edw. 7, c. 29, which has replaced the Patents, Designs and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), referred to in the Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I., so far as patents and designs are concerned. As to such declarations, see title PATENTS AND INVENTIONS, Vol. XXII., p. 153.

(*g*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I., title "Letter or Power of Attorney"; and see title AGENCY, Vol. I., p. 160.

(*h*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I., as amended by the Finance Act, 1895 (58 & 59 Vict. c. 16), s. 11, which substitutes 2*s.* 6*d.* for 5*s.* as the duty on a power of attorney for the transfer or acceptance of Government or parliamentary stock of which the nominal value does

mere direction from a principal to an agent already employed (*i*) would not fall within the charge, any delegation of authority in writing by which one person is empowered to do an act in the name of another is liable to the duty (*k*).

Copies, attested or authenticated.

1562. A general charge is imposed upon any attested or authenticated copy or extract (*l*) of (1) an instrument chargeable with any duty; (2) an original will, testament or codicil; (3) the probate or probate copy of a will or codicil; (4) letters of administration, or any confirmation of a testament; (5) any public register other than those specifically charged with a duty of 1*d.*; (6) the books, rolls or records of any court. The charge is 1*s.*, or the same duty as on the original, whichever is the least (*m*). Copies or extracts from any law proceedings are exempt, and copies or extracts from any register of births, baptisms, marriages, deaths or burials (including cremations) (*n*), for which the person giving the same is entitled to any fee or reward, are liable to a duty of 1*d.* (*o*), unless furnished by any clergyman, registrar, or other official person pursuant to any Act or under any general regulation, in which case they are exempt.

Duplicates and counterparts.

1563. A duplicate or counterpart must be stamped with the same stamp as is chargeable upon the original, unless the latter amounts to more than 5*s.*, in which case, upon presentation together with the original duly stamped to the Commissioners, it may be stamped with a 5*s.* stamp and a stamp to denote that the duty on the original has been paid (*p*).

not exceed £100. As to proxies and voting papers, see title COMPANIES, Vol. V., p. 258; *Sadgrove* v. *Bryden*, [1907] 1 Ch. 318.

(*i*) *Parker* v. *Dubois* (1836), 1 M. & W. 30; see also *Baker* v. *Dale* (1858), 1 F. & F. 271; *Vansittart* v. *James* (1858), 1 F. & F. 156; but it may be doubted whether these latter cases would be followed, having regard to the judgments in *Walker* v. *Remmett* (1846), 2 C. B. 850, which was not cited.

(*k*) *R.* v. *Kelk* (1840), 12 Ad. & El. 559; *Walker* v. *Remmett*, *supra*.

(*l*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I., title "Copy or Extract." As to copies of court rolls, see title COPYHOLDS, Vol. VIII., pp. 17, 63. The duty only applies to copies or extracts which are admissible in evidence *per se*, and not to copies which only become admissible upon the non-production of the original (*Braythwayte* v. *Hitchcock* (1842), 10 M. & W. 494); and see title EVIDENCE, Vol. XIII., pp. 515, 516.

(*m*) Copies under heads (1)—(4) (see the text, *supra*) may be stamped without a penalty fourteen days after the date of attestation or authentication on payment of the duty only (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 63). As to the time for stamping instruments generally, see p. 717, *ante*.

(*n*) Cremation Act, 1902 (2 Edw. 7, c. 8), s. 7; and see title BURIAL AND CREMATION, Vol. III., p. 575.

(*o*) The duty may be denoted by an adhesive stamp to be cancelled by the person who signs it before delivery (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 64).

(*p*) *Ibid.*, Sched. I., title "Duplicate," and see *ibid.*, ss. 72, 11. This denoting stamp is necessary to the admissibility of any duplicate or counterpart not stamped as an original, except the counterpart of a lease not executed by or on behalf of the lessor. A duplicate in all cases, and a counterpart as against the party executing it and those claiming under such party, being primary evidence, no objection can be taken to the admission of a duplicate,

SECT. 6. Duties upon Particular Instruments.

1564. An exemplification or constat under the Great Seal of any royal grant or letters patent is liable to a duty of £5, and an exemplification under the seal of any court in England or Ireland of any records or proceedings therein to a duty of £3 (*q*).

Exemplification.

1565. A duty of 10*s.* is charged upon any exchange, partition or division of real or heritable property in which any consideration agreed to be paid for equality does not exceed £100 (*r*). If such consideration does exceed £100, the same *ad valorem* duty is chargeable upon the whole amount as upon a conveyance on sale (*s*).

Exchange; partition.

Marketable securities.

1566. Marketable securities (*t*) are liable to stamp duty (*a*)—

or, by a party who has executed it, to the admission of a counterpart, on the ground that the original is not duly stamped (*Paul* v. *Meek* (1828), 2 Y. & J. 116). On the other hand, as against a party who has not executed it, a counterpart is only secondary evidence, and therefore the ordinary rule applies that it is inadmissible if it is proved that the instrument which is primary evidence was never duly stamped, or that an unstamped duplicate which would be primary evidence is available; see title EVIDENCE, Vol. XIII., p. 516. Under the Stamp Act, 1815 (55 Geo. 3, c. 184), the duty applicable to counterparts other than those of leases was the charge of £1 15*s.* on deeds not otherwise charged, and accordingly a document tendered as a counterpart assignment, but only stamped with £1 10*s.*, was refused (*Baker* v. *Gostling* (1834), 1 Bing. (N. C.) 246). In *Munn* v. *Godbold* (1825), 3 Bing. 292, the judgment of BEST, C.J., suggests that an unstamped counterpart is admissible so long as it is not tendered as a deed, and is then better evidence than any other copy. It is clear, however, that, under the present law, a counterpart unstamped cannot be received in evidence, but can only be used to refresh the memory of a witness who proves it to be a copy; see *Braythwayte* v. *Hitchcock* (1842), 10 M. & W. 494. *Waller* v. *Horsfall* (1808), 1 Camp. 501, and *Smith* v. *Maguire* (1858), 1 F. & F. 199, must also be explained upon the same principle; and see title PARTITION, Vol. XXI., pp. 824, 831.

(*q*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I., title "Exemplification."

(*r*) *Ibid.*, Sched. I., titles "Exchange," "Partition," and see *ibid.*, s. 73; *Coats* v. *Inland Revenue Commissioners*, [1897] 2 Q. B. 423, C. A.

(*s*) As to the duty on conveyances, see title SALE OF LAND. In ascertaining the consideration regard must be had to the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 57, so that if one party undertakes to discharge a debt or mortgage due from the other this would be part of the consideration, and in the case of a partition or division any disparity in the distribution of a mortgage might have to be taken into account; see also Finance (1909–10) Act, 1910 (10 Edw. 7, c. 8), s. 73 (as to double duty).

(*t*) The expression "security" does not necessarily involve hypothecation (*Speyer Brothers* v. *Inland Revenue Commissioners*, [1908] A. C. 92); and see title MORTGAGE, Vol. XXI., p. 135. "Marketable security" is defined by the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 122, as a security of such a description as to be capable of being sold in any stock market in the United Kingdom. The words "of such a description" are important, the intention being, on the one hand, to include a security of such a description as to be capable, according to the use and practice of stock markets, of being there bought and sold, although there may in fact be no market for the particular security in question, and, on the other hand, not to include a security which is not of that description, although, having some value, it is in fact capable of being sold (*Texas Land and Cattle Co.* v. *Inland Revenue Commissioners* (1888), 16 R. (Ct. of Sess.) 69; *Brown, Shipley & Co.* v. *Inland Revenue Commissioners*, [1895] 2 Q. B. 598, C. A.). An instrument which falls within the description "marketable security" is liable to duty

(*a*) For note (*a*), see next page.

Marketable securities.

dependent upon the amount secured (*b*)—in the cases hereafter mentioned :—

(1) Marketable securities of any company (*c*) or body of persons, corporate or unincorporate, formed or established in the United Kingdom, except bills issued by county councils or municipal corporations within the Finance Act, 1897 (*d*), s. 8, are liable in every case (*e*), the duty being dependent upon the date and upon whether the security is transferable by delivery or not (*f*).

as such, although it may also fall within the description "promissory note" (*Brown, Shipley & Co.* v. *Inland Revenue Commissioners*, [1895] 2 Q. B. 598, C. A.; *Speyer Brothers* v. *Inland Revenue Commissioners*, [1908] A. C. 92); and see title BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS, Vol. II., p. 574, note (*k*).

(*a*) There are six scales of duty applicable under different circumstances, as hereafter stated ;

(1) If the money secured :—

	s.	d.
Does not exceed £10	0	3
Exceeds £10 but does not exceed £25	0	8
„ £25 „ „ £50	1	3
„ £50 „ „ £100	2	6
„ £100 „ „ £150	3	9
„ £150 „ „ £200	5	0
„ £200 „ „ £250	6	3
„ £250 „ „ £300	7	6
„ £300 for every £100 or part thereof	2	6

(2) A scale double that last mentioned.

(3) 1*s.* for every £10 or part thereof of the money secured.

(4) A scale double that last mentioned.

(5) 6*d.* for every £20 or part thereof of the money secured.

(6) A scale double that last mentioned (Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I.; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 76).

(*b*) The "amount secured" is reckoned exclusive of interest (compare *Barker* v. *Smark* (1841), 7 M. & W. 590) of any sum payable only at the option of the obligors (*Knights Deep, Ltd.* v. *Inland Revenue Commissioners*, [1900] 1 Q. B. 217, C. A.); but any sum which is certainly payable, though called a "premium," must be included (*Rowell* v. *Inland Revenue Commissioners*, [1897] 2 Q. B. 194).

(*c*) As to companies generally, see title COMPANIES, Vol. V., pp. 1 *et seq.*; as to duty on loan capital, debentures, and debenture trust deeds, see *ibid.*, pp. 362, 363.

(*d*) 60 & 61 Vict. c. 24.

(*e*) If not transferable by delivery, the scale applicable is scale (1) (see note (*a*), *supra*; Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I., title "Marketable Security"; and see *ibid.*, s. 82 (1) (a)).

If transferable by delivery, and signed or dated before or on the 6th August, 1885 (and not signed, dated or offered for subscription after that date), scale (2) is applicable (*ibid.*; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 76).

If transferable by delivery and signed, or dated, or offered for subscription after the 6th August, 1885, scale (4) is applicable, unless the security is given in substitution for a like security duly stamped in accordance with the law in force at the time when it became subject to duty, in which case scale (6) is applicable, the payment of duty on the original security being indicated by a denoting stamp (*ibid.*); and see p. 716, *ante*. As to the meaning of the words "in substitution for a like security," see *Mount Lyell Mining and Rail. Co.* v. *Inland Revenue Commissioners*, [1905] 1 K. B. 161, C. A.

(*f*) Any instrument used for the purpose of assigning, transferring, or in any manner negotiating the right to any marketable security, if delivery thereof is by usage treated as sufficient for the purpose of a sale in the market, whether that delivery constitutes a legal negotiation or not, is deemed a marketable security transferable by delivery, and the delivery

SECT. 6.
Duties upon Particular Instruments.

(2) In the case of other marketable securities the liability to duty depends upon the occurrence of some event in the United Kingdom, and the amount depends upon various circumstances (*g*) and upon whether the security is transferable by delivery or not (*h*).

The material date of the security.

In ascertaining the proper stamp which an instrument should bear, the material date is the date at which the instrument first

thereof to be an assignment, transfer, or negotiation (Finance Act, 1899 (62 & 63 Vict. c. 9), s. 6); see, for example, *Speyer Brothers* v. *Inland Revenue Commissioners* (1902), 66 J. P. 551; *Noakes* v. *Inland Revenue Commissioners* (1900), 83 L. T. 714; compare *Bechuanaland Exploration Co.* v. *London Trading Bank*, [1898] 2 Q. B. 658.

(*g*) Marketable securities by or on behalf of any foreign or colonial State, Government, municipal body, corporation or company, bearing date or signed after the 3rd June, 1862, and either made or issued in the United Kingdom, or offered for subscription and given or delivered to a subscriber in the United Kingdom, or (the interest thereon being payable in the United Kingdom) assigned, transferred, or in any manner negotiated in the United Kingdom, are liable to duty as follows:—

(i.) Colonial Government securities, according to scale (1) (see note (*a*), p. 729, *ante*) (Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I., title "Marketable Security"); and see *ibid.*, s. 82 (1).

(ii.) Colonial municipal securities, if not transferable by delivery, according to scale (1); if transferable by delivery, according to scale (1) if bearing date or signed before or on the 6th August, 1885, and not bearing date, signed, or offered for subscription after that date; if bearing date, signed, or offered for subscription after that date, according to scale (3), unless given in substitution for a like security duly stamped, in which case scale (5) is applicable (*ibid.*); and see note (*a*), p. 729, *ante*. As to denoting, see p. 716, *ante*.

(iii.) Other foreign or colonial securities, to double the respective duties chargeable on colonial municipal securities (*ibid.*; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 76), unless duly stamped before the passing of the last-mentioned Act (29th April, 1910).

All other marketable securities which are transferable by delivery, and made or issued by or on behalf of any foreign State or Government, or foreign or colonial municipal body, corporation or company, are liable to duty if assigned, transferred, or in any manner negotiated in the United Kingdom after the 1st August, 1899 (Finance Act, 1899 (62 & 63 Vict. c. 9), s. 4 (1)). The words "is not . . . chargeable" in *ibid.*, s. 4 (1) (b), must be read as "could not . . . become chargeable," that is to say, a security which "is not chargeable" under the Stamp Act, 1891 (54 & 55 Vict. c 39), only because it has not yet been negotiated in the United Kingdom, will, when so negotiated, be chargeable under the Stamp Act, 1891 (54 & 55 Vict. c. 39), and not the Finance Act, 1899 (62 & 63 Vict. c. 9).

Colonial municipal securities coming under this head are liable according to scale (3), other securities according to scale (4) (see note (*a*), p. 729, *ante*), unless already stamped before 29th April, 1910 (the date of the passing of the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8)).

It should be observed that there is no provision in the case of these securities for a reduced duty where the security is only a substituted security.

As to the meaning of the expressions "made," "issued," "offered for subscription," "transferred" etc., see *Revelstoke* (*Lord*) v. *Inland Revenue Commissioners*, [1898] A. C. 565; *Chicago Railway Terminal Elevator Co.* v. *Inland Revenue Commissioners* (1896), 75 L. T. 157; *Brown* v. *Inland Revenue Commissioners, Gordon* v. *Inland Revenue Commissioners* (1900), 84 L. T. 71, C. A.; and, on the law prior to 1885, *Grenfell* v. *Inland Revenue Commissioners* (1876), 1 Ex. D. 242; compare *Re Perth Electric Tramways, Ltd., Lyons* v. *Tramways Syndicate, Ltd. and Perth Electric Tramways, Ltd.*, [1906] 2 Ch. 216.

(*h*) See note (*f*), p. 729, *ante*.

became liable to duty, and if properly stamped according to the law at that date no further duty is chargeable without express words (*i*).

Provisions as to stamping and collection of duty on marketable securities.

1567. The Commissioners have power to stamp any foreign or colonial security without reference to the date thereof and without any penalty upon being satisfied that it was not made or issued and has not been transferred, assigned or regulated within the United Kingdom (*j*).

They have also power in the case of issues of certain foreign securities to accept payment of the amount which would be payable if all the securities were stamped, and thereupon to dispense with the need for stamping the securities of that issue (*k*).

Share warrants and stock certificates to bearer.

1568. Share warrants issued under the Companies (Consolidation) Act, 1908 (*l*) and stock certificates to bearer (*m*) and instruments having the like effect and issued by or on behalf of any company or body of persons formed or established in the United Kingdom, are liable to a duty of three times the duty on a deed of transfer of the shares or stock, the consideration being taken as the nominal value (*n*).

Foreign share warrants and stock certificates to bearer.

1569. Share warrants and stock certificates to bearer and instruments having the like effect, by means of which any share or stock of any company or body of persons, formed or established out of the United Kingdom, is after the 1st August, 1899, transferred or negotiated in the United Kingdom, are liable to a duty of 2*s.* for every £10, or part thereof, of the nominal value of the share or stock to which the certificate relates (*o*).

Other instruments to bearer.

1570. Instruments to bearer which are not chargeable as share warrants or stock certificates under the provisions referred to in the preceding paragraphs, by means of which any share or stock of any company or body of persons formed or established out of the United Kingdom is after the 1st August, 1899, transferred or negotiated in the United Kingdom, including any instruments which are treated by usage as sufficient to transfer the right, are liable to a duty of 3*d.* for every £25, or part thereof, of the nominal value of the share or stock (*p*).

(*i*) See p. 712, *ante*.

(*j*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 84.

(*k*) Finance Act, 1895 (58 & 59 Vict. c. 16), s. 14. For a list of securities in connection with which this provision has been used, see Highmore's Stamp Laws, 3rd ed., p. 232.

(*l*) 8 Edw. 7, c. 69, s. 37.

(*m*) Including stock certificates to bearer issued after the 3rd June, 1881, under the provisions of the Local Loans Act, 1875 (38 & 39 Vict. c. 83), or of any other Act authorising the creation of debenture stock, county, corporation or municipal stock, or funded debt (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 108).

(*n*) *Ibid.*, Sched. I., titles "Share Warrant" and "Conveyance"; Finance Act, 1899 (62 & 63 Vict. c. 9), s. 5. The duty is approximately 1½ per cent.

(*o*) Finance Act, 1899 (62 & 63 Vict. c. 9), s. 4 (1); Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 76.

(*p*) Finance Act, 1899 (62 & 63 Vict. c. 9), ss. 4 (2), 6.

SECT. 6. Duties upon Particular Instruments.

Capital of limited partnerships.

1571. A duty of 5*s.* for every £100 or part thereof is charged upon the statement of the capital, or increase in the capital, of a limited partnership required to be registered under the Limited Partnerships Act, 1907 (*q*). If not paid, this duty, with interest at 5 per cent., may be recovered as a joint and several debt due to His Majesty from the partners or any of them (*r*).

Dissolution of a partnership.

1572. A deed of dissolution of partnership, though not subjected to any specific duty as such, is chargeable with at least the duty of 10*s.* upon deeds not described in the Schedule (*s*), and, in many cases, with *ad valorem* duty as a conveyance on sale (*t*).

Scrip certificate.

1573. A duty of 1*d.* is charged upon any scrip certificate, scrip or other document entitling any person to become the proprietor of any share or fraction of a share in any company or proposed company, or to the right of a subscriber to any loan or proposed loan raised by any company or proposed company or municipal body or corporation; provided that, in the case of a foreign or colonial company or corporation, the duty is only chargeable upon scrip issued or delivered in the United Kingdom (*u*).

Voluntary dispositions *inter vivos*.

1574. With certain exceptions hereinafter mentioned, any conveyance or transfer operating as a voluntary disposition *inter vivos*, which expression includes any conveyance or transfer which is not made in favour of a purchaser, incumbrancer or other person in good faith (*a*) and for valuable consideration (which includes marriage) (*b*),

(*q*) Limited Partnerships Act, 1907 (7 Edw. 7, c. 24), s. 11; and, as to the particulars required, see title PARTNERSHIP, Vol. XXII., p. 109. As to the duty charged on the capital of companies, compare title COMPANIES, Vol. V., p. 60.

(*r*) Limited Partnerships Act, 1907 (7 Edw. 7, c. 24), s. 11. As to the recovery of Crown debts, see title CROWN PRACTICE, Vol. X., pp. 5 *et seq.*; and see p. 737, *post*.

(*s*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I., title "Deed."

(*t*) See, for example, *Potter* v. *Inland Revenue Commissioners* (1854), 10 Exch. 147 (assignment of goodwill); *Christie* v. *Inland Revenue Commissioners* (1866), L. R. 2 Exch. 46 (conveyance of real property, stock, debts etc.); *Phillips* v. *Inland Revenue Commissioners* (1867), L. R. 2 Exch. 399 (conveyance of real assets); *Troup* v. *Inland Revenue Commissioners* (1891), 7 T. L. R. 610 (assignment of book debts, goodwill etc.); *Garnett* v. *Inland Revenue Commissioners* (1899), 81 L. T. 633 (deed of dissolution and discharge by one partner of all claims to assets); and see title SALE OF LAND.

(*u*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I., title "Scrip"; Revenue Act, 1909 (9 Edw. 7, c. 43), s. 9; and see title COMPANIES, Vol. V., p. 363.

(*a*) The words "good faith" imply a duty the breach of which would be bad faith, and therefore, since a solvent transferor is free to dispose of his property for inadequate consideration, can mean no more than that the consideration is a genuine element in the transaction and not merely introduced to defraud the revenue.

(*b*) Ordinarily "valuable consideration" means consideration in money or money's worth which is not merely illusory or nominal, and a conveyance for such consideration would not be "voluntary" (*Re Tetley, Ex parte Jeffery* (1896), 75 L. T. 166; *Bayspoole* v. *Collins* (1871), 6 Ch. App. 228; and see title CONTRACT, Vol. VII., pp. 383 *et seq.*); but it is provided that (except where marriage is the consideration; see p. 734, *post*) the consideration

is chargeable with stamp duty according to an *ad valorem* scale upon the value of the property conveyed or transferred (*c*).

No such instrument is to be deemed duly stamped unless the Commissioners have expressed their opinion as to the

Adjudication essential.

for any conveyance or transfer shall not for this purpose be deemed to be valuable consideration where the Commissioners are of opinion that by reason of the inadequacy of the sum paid as consideration or other circumstances the conveyance or transfer confers a substantial benefit on the transferee (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 74 (5)). It has been suggested that the consequence of this provision is that no conveyance or transfer can be safely stamped without its being submitted for adjudication (Alpe, Law of Stamp Duties, 12th ed., p. 118). But it is to be observed that the qualification of the meaning of the word " valuable " only operates where the Commissioners have formed an opinion, and this opinion must be that referred to in the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 74 (2) (see the text, *infra*), formed in the course of the procedure for adjudication laid down in the Stamp Act, 1891 (54 & 55 Vict. c. 39) ; see p. 716, *ante*. Consequently a disposition made to a purchaser, incumbrancer, or other person for a consideration which is substantial and a genuine element in the transaction may be duly stamped without regard to the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 74 (2), (5), if it is not presented for adjudication ; and it is submitted that, upon general principles of construction, if an instrument has once been duly stamped, it cannot be held that, as the result of a subsequent adjudication, the instrument is to be deemed not duly stamped and the transferor held liable to a penalty. The qualification of the ordinary meaning of " valuable " must, therefore, be held to be limited to the case of an instrument presented for adjudication which is not otherwise duly stamped. This view was expressed by WARRINGTON, J., in *Re Weir and Pitt's Contract* (1911), 55 Sol. Jo. 536, but the report, which represents the learned judge as being apparently of opinion that the fact of the deed being stamped indicated that the Commissioners had had the opportunity of considering the instrument, impairs the value of that case as an authority. Inasmuch as the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 74 (2), relates only to instruments not already adjudicated upon, the words " voluntary disposition " in that sub-section must be construed without reference to the qualification of the word " valuable " introduced by the second part of *ibid.*, s. 74 (5) ; the intention being that, while the obligation to obtain adjudication is limited to voluntary dispositions in the ordinary meaning of the term, the work of the Commissioners in the regular procedure of adjudicating upon unstamped instruments should be facilitated by removing all controversy in the case of instruments where the transferee obtained a substantial benefit. Where, therefore, the sufficiency of the stamp on a conveyance is questioned, the court must decide the question with reference to the ordinary meaning of " valuable."

(*c*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 74. The duty charged is the like duty as if the conveyance were on sale, the value of the property conveyed being substituted for the amount or value of the consideration for the sale. Except as regards stock of the Bank of England and certain colonial stocks (as to which see the first heading, " Conveyance or Transfer, whether on sale or otherwise," in the Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I.), the scale of duty is that contained in that Schedule under the title "Conveyance or Transfer on Sale," as amended by the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 73, and is approximately ½ per cent. for conveyances of stock and marketable securities in all cases, and of other property in cases where the value of the property conveyed does not exceed £500 and the instrument contains a statement that the transaction does not form part of a larger transaction or series of transactions in which the value or aggregate value of the property conveyed exceeds that amount. In other cases the scale is approximately 1 per cent. A composition for stamp duty on transfers of stock, entered into under the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 114 or s. 115 (see p. 720, *ante*), covers this duty.

SECT. 6. Duties upon Particular Instruments.

duty chargeable in accordance with the provisions for adjudication (*d*).

Dispositions not within the charge.

1575. Dispositions are not liable to this duty where the property is conveyed to a body of persons incorporated by a special Act and precluded by its Act from dividing any profit amongst its members, and the property is to be held for the purposes of an open space or for its preservation for the benefit of the nation (*e*).

A disposition made in consideration of marriage is not within the charge (*f*).

A conveyance made for nominal consideration for the purposes of securing a loan, or for effectuating a change in trustees, or where no beneficial interest passes in the property conveyed or made to a beneficiary by a person in a fiduciary capacity under any trust, and a disentailing assurance not limiting any new estate other than an estate in fee simple in the person disentailing, are expressly excluded from the charge of duty (*g*).

Instrument operating as settlement also.

1576. An instrument chargeable as a settlement and also as a voluntary disposition *inter vivos* is to be charged with the latter duty only (*h*).

Part X.—Corporation Duty.

SECT. 1.—*Property Subject to Duty.*

Rate of duty and property charged.

1577. Subject to certain exemptions (*i*), a duty of 5 per cent. is levied annually upon the annual value, income, or profits of the real and personal property (*j*) of every body corporate or unincorporate (*k*), after deducting necessary outgoings properly incurred in the management of such property (*l*).

(*d*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 74 (2); see note (*b*), p. 732, *ante*; and, as to adjudication, see p. 716, *ante*.

(*e*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 74 (1).

(*f*) *Ibid.*, s. 74 (5).

(*g*) *Ibid.*, s. 74 (6).

(*h*) *Ibid.*, s. 74 (4); and see title SETTLEMENTS.

(*i*) See pp. 735, 736, *post*.

(*j*) As regards real property, the duty is to be levied on the annual value, which means substantially the Sched. A assessment (as to which see title INCOME TAX, Vol. XVI., p. 619), subject to the deductions allowed; the words "income or profits" are directed principally to personal property, and not intended to extend the recognised meaning of "annual value" in relation to real property so as to include profits derived from a special use of the land, such as gate money of a cricket club (*Re Surrey County Cricket Club*, [1901] 2 K. B. 400); and see, further, title CORPORATIONS, Vol. VIII., pp. 377, 378. As to increment value duty payable by corporations, see pp. 561 *et seq.*, *ante*.

(*k*) "Body unincorporate" includes every unincorporated company, fellowship, society, association, trustee or number of trustees, to or in whom respectively any real or personal property shall belong, in such manner, or be vested upon such permanent trusts, that the same shall not be liable to legacy or succession duty (Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 12).

(*l*) *Ibid.*, s. 11.

SECT. 2.—*Exemptions.*

Exemptions.

1578. Exemptions from the duty are granted (*m*) in respect of (1) property vested in or managed by the Commissioners of Works or of Woods and Forests, or any Government department (*n*); (2) property which, or the income or profits whereof, are legally appropriated and applied for the benefit of the public at large or of any county, shire, borough, or place, or the ratepayers or inhabitants thereof, or in any manner expressly prescribed by statute (*o*); (3) property which or the income or profits whereof is or are legally appropriated for any purpose connected with any religious persuasion or for any charitable purpose (*p*), or for the promotion of education, literature, science, or the fine arts (*q*); (4) property of any friendly society (*r*) or savings bank (*s*) established according to statute; (5) property and capital of any body established for any trade or business or of which the capital is chargeable with legacy or succession duty (*t*); (6) property acquired by or with funds

(*m*) Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 11 (1), (7).

(*n*) See title CONSTITUTIONAL LAW, Vol. VII., pp. 122 *et seq.*

(*o*) In order that property may fall within this exemption it is sufficient if the statute determines the nature of the objects to which the property or profits are appropriated, though it does not contain directions as to the methods by which the property is to be so appropriated (*Re Bootham Ward Strays, York, Inland Revenue Commissioners* v. *Scott*, [1892] 2 Q. B. 152, C. A. (property required by Act of Parliament to be "for ever held and enjoyed" by certain freemen)).

(*p*) "Charitable" is not used in the extended sense attributed to that word in connection with charitable trusts, as to which see title CHARITIES, Vol. IV., pp. 105 *et seq.* Though the term cannot be the subject of a precise definition, it does not, at any rate, include a mere appropriation for the benefit of certain freemen (*Re Bootham Ward Strays, York, Inland Revenue Commissioners* v. *Scott, supra*). Property is not exempt which is available only for the relief of distressed members of a society, and derived largely from contributions of the members, so as to approximate to the case of a mutual benefit society (*Tailors in Glasgow (Incorporation)* v. *Inland Revenue* (1887), 14 R. (Ct. of Sess.) 729; *Re Linen and Woollen Drapers, etc. Institution* (1887), 58 L. T. 949).

(*q*) The word "science" is to be construed broadly, and includes the science of engineering (*Inland Revenue Commissioners* v. *Forrest* (1890), 15 App. Cas. 334). In order that the whole property of an institution may be exempt, it is necessary that there should be a legal obligation that substantially the whole of it should be devoted to the promotion of science; and if one of the main objects is to promote the interests of the members, although by the acquisition of scientific knowledge, its property will be liable to the duty except such as is legally appropriated to the promotion of science and cannot be devoted in other ways to the general interests of the members (*Writers to the Signet (Society)* v. *Inland Revenue Commissioners* (1886), 14 R. (Ct. of Sess.) 34; *Inland Revenue Commissioners* v. *Forrest, supra; Re Royal College of Surgeons of England*, [1899] 1 Q. B. 871, C. A.).

(*r*) See title FRIENDLY SOCIETIES, Vol. XV., p. 162.

(*s*) As to the general law in relation to savings banks, see title BANKERS AND BANKING, Vol. I., p. 576.

(*t*) See title ESTATE AND OTHER DEATH DUTIES, Vol. XIII., pp. 177 *et seq.* The power to distribute profits is not necessary to the carrying on of a business, and therefore a company, such as the Incorporated Council of Law Reporting, registered without the word "limited" as not

SECT. 2. Exemptions.

voluntarily (*a*) contributed to any body within the preceding thirty years; and (7) property acquired by any body corporate or unincorporate within that period on an occasion when legacy or succession duty was paid (*b*).

SECT. 3.—*Incidents of Duty.*

Assessment and recovery.

1579. The duty is a stamp duty under the management of the Commissioners of Inland Revenue (*c*), and recoverable in the same way as succession duty (*d*) from the body chargeable or the accountable officer (*e*), and is a first charge on the property of the body while in its possession or of any party acquiring it with notice of the duty being in arrear (*f*). Accounts of property must be rendered annually to the Commissioners (*g*), who may assess the duty on the basis of such accounts or require further information (*h*). Penalties are imposed for failure to render the accounts or to pay the duty (*i*).

for profit may still be within the exemption (*Re Incorporated Council of Law Reporting for England and Wales* (*Duty on Estate*) (1888), 22 Q. B. D. 279).

(*a*) "Voluntarily" means gratuitously, and the exemption is not applicable to the case of contributions by members for which they receive, or may in certain events receive, a substantial return (*Re Linen and Woollen Drapers, etc. Institution* (1887), 58 L. T. 949 (contributions to a fund available only for distressed members); *Re New University Club* (*Duty on Estate*) (1887), 18 Q. B. D. 720 (subscriptions of members)).

(*b*) Where some of the property is and some is not acquired by funds voluntarily contributed, and within the meaning of the Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 11 (6), (7), accounts must be delivered distinguishing the latter from the former, and the former will then be exempt (*Re Linen and Woollen Drapers, etc. Institution, supra*).

(*c*) Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 13. As to stamp duties generally, see pp. 700 *et seq.*, *ante*.

(*d*) Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51). As to succession duty, see title ESTATE AND OTHER DEATH DUTIES, Vol. XIII., pp. 262 *et seq.*

(*e*) *I.e.*, every chamberlain, treasurer, bursar, receiver, secretary or other officer, trustee or member of a body corporate or unincorporate, by whom the annual income or profits of property, in respect whereof the duty is chargeable, shall be received, or in whose possession, or under whose control, the same shall be (Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 12).

(*f*) *Ibid.*, s. 14. In the case of property being administered by the court, payment thereout is to be provided for by the court (*ibid.*, s. 20).

(*g*) *Ibid.*, s. 15. A corporation established for a trade or business within the exemption contained in *ibid.*, s. 11 (5), need not furnish a return (*Re Incorporated Council of Law Reporting for England and Wales* (*Duty on Estate*) (1888), 22 Q. B. D. 279).

(*h*) Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 17. Appeals against the assessment may be made in the same way as in the case of succession duty (*ibid.*, s. 19 (2)); see title ESTATE AND OTHER DEATH DUTIES, Vol. XIII., pp. 303, 304.

(*i*) Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 18. The penalty is 10 per cent. upon the amount of duty payable for each month of default.

Part XI.—Recovery of Revenue Duties and Penalties.

SECT. 1.—*In the High Court.*

SECT. 1. In the High Court.

1580. All revenue duties and penalties are recoverable in the High Court, and all goods seized as forfeited under any Act of Parliament relating to inland revenue or to customs may be returned into the High Court for condemnation (*k*). The proceedings are taken on the Revenue side of the King's Bench Division (*l*). They must be commenced within three years next after the date when the penalty was incurred or the seizure made (*m*).

Jurisdiction.

No appeal lies to the Court of Criminal Appeal from a conviction of the Revenue side of the King's Bench Division on an information for a penalty (*n*).

No appeal.

1581. All duties, penalties, and forfeitures incurred or imposed by any Act of Parliament relating to customs may also be recovered by the appropriate proceedings in the Royal Courts of the Channel Islands or of the Isle of Man (*o*).

Proceedings in the Channel Islands and the Isle of Man.

1582. The excise duties on beer, on club purchases of intoxicating liquors, and on glucose, motor spirit, saccharine, spirits, and tobacco may also be recovered when in arrear by summary process of seizure and sale (*p*). In the case of licence duty payable by instalments, where any part of the second moiety is due and unpaid, it may be recovered either as a debt due to the Crown or by summary process, as in the case of club duty due and unpaid (*q*).

Summary seizure and sale.

1583. All goods which are subject to duties of excise, and all the materials, machinery and vessels used in their manufacture, are liable

Lien for duties on goods and plant of a trader.

(*k*) Customs and Inland Revenue Act, 1879 (42 & 43 Vict. c. 21), s. 11; Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 22 (1). Where goods seized as forfeited are not within three months after the seizure claimed by the proprietor by application in writing either to the Commissioners or to the officer who seized them or in whose custody they are, the goods are forfeited as absolutely as if condemned by judgment of the High Court (Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 25 (4)).

(*l*) See title CROWN PRACTICE, Vol. X., pp. 4 *et seq.*; see, further, titles ESTATE AND OTHER DEATH DUTIES, Vol. XIII., pp. 227 *et seq.*, 260 261, 303, 304, 317, 318; INCOME TAX, Vol. XVI., pp. 683 *et seq.*; INHABITED HOUSE DUTY, Vol. XVII., p. 189; and see pp. 563, 565, 570, 573, 576, 581, *ante*.

(*m*) Excise Transfer Order, 1909 (Stat. R. & O., 1909, p. 239), r. 25, applying the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 257, to the exclusion of the Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 22 (2). As to the computation of time for taking proceedings, see *Hardy* v. *Ryle* (1829), 9 B. & C. 603; *Young* v. *Higgon* (1840), 6 M. & W. 49.

(*n*) *R.* v. *Hausman*, [1909] W. N. 198.

(*o*) Customs and Inland Revenue Act, 1879 (42 & 43 Vict. c. 21), s. 11.

(*p*) See pp. 615, 617, 620, 625, *ante*.

(*q*) Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 6 (2); see p. 617, *ante*. The summary powers conferred on the Commissioners by the Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 30, are in abeyance as to England and Wales.

SECT. 1. In the High Court.

for all the duties and penalties incurred by the trader whilst they are in his possession, or in the possession of any other person in trust for him (*r*). This liability continues to attach even where the specific duty chargeable on the goods has been paid, provided that at the time the goods were seized under the lien there were other duties for which the trader was responsible remaining unpaid (*s*). The lien ceases when the goods, having been duly taken account of by the proper official and charged with the duty, are subsequently sold for value and delivered in the ordinary course of trade (*t*).

When double duty may be claimed.

Where any duties of excise are due and unpaid by a trader, or where they have been charged and demand has been made for their payment, the trader making default in payment is liable for double duty (*a*).

SECT. 2.—*In Courts of Summary Jurisdiction.*

SUB-SECT. 1.—*In General.*

Cases in which revenue duties and penalties may be recovered.

1584. Revenue duties and penalties may also be sued for in courts of summary jurisdictiction in the following cases:—

(1) where the proceedings are taken under an Act of Parliament relating to the revenue of excise (*b*);

(2) where the duty or penalty has been incurred under or imposed by a Customs Act (*c*);

(3) where the offence is one against the Stamp Duties Management Act, 1891 (*d*), or the Inland Revenue Regulation Act, 1890 (*e*);

(4) where the offence is one involving liability to a penalty not exceeding £20 imposed under the Acts of Parliament relating to assessments to income tax (*f*), inhabited house duty (*g*), or land tax (*h*), or to a penalty of more than £20 which is directed to be added to the assessments to income tax (*i*); and

(*r*) Excise Management Act, 1841 (4 & 5 Vict. c. 20), s. 24. This applies also to goods which are subject to a mortgage, bill of sale, or other security (Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 14); and see title BILLS OF SALE, Vol. III., p. 63.

(*s*) *A.-G.* v. *Trueman* (1843), 11 M. & W. 694. A person selling the goods whilst the lien attaches is liable to the Crown for the proceeds of the sale as money had and received (*A.-G.* v. *Walmsley* (1843), 12 M. & W. 179).

(*t*) Excise Management Act, 1841 (4 & 5 Vict. c. 20), s. 24. But it does not cease on the passing of the goods into the hands of a factor who has made advances on them (*A.-G.* v. *Trueman, supra*); and see *A.-G.* v. *Walmsley, supra.*

(*a*) Excise Management Act, 1834 (4 & 5 Will. 4, c. 51), s. 11.

(*b*) Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 65; Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 8; *R.* v. *Ingham* (1888), 21 Q. B. D. 47.

(*c*) Customs and Inland Revenue Act, 1879 (42 & 43 Vict. c. 21), s. 11.

(*d*) 54 & 55 Vict. c. 38, s. 26; and see p. 704, *ante*.

(*e*) 53 & 54 Vict. c. 21, s. 36.

(*f*) Income Tax Act, 1842 (5 & 6 Vict. c. 35); Income Tax Act, 1853 (16 & 17 Vict. c. 34); Taxes Management Act, 1880 (43 & 44 Vict. c. 19); and see title INCOME TAX, Vol. XVI., pp. 678, 685, 688.

(*g*) House Tax Act, 1851 (14 & 15 Vict. c. 36); and see title INHABITED HOUSE DUTY, Vol. XVII., p. 189.

(*h*) Land Tax Perpetuation Act, 1798 (38 Geo. 3, c. 60); and see title LAND TAX, Vol. XVIII., p. 320.

(*i*) Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 21.

SECT. 2. In Courts of Summary Jurisdiction.

(5) where the offence is one of failing to produce to the Commissioners of Inland Revenue an instrument of transfer or lease for assessment of the increment value duty (*k*), or of knowingly making a false statement or representation for the purpose of obtaining any allowance, reduction, repayment, or rebate of any of the duties imposed by the Finance (1909-10) Act, 1910 (*l*).

General procedure

1585. The general procedure established by the Summary Jurisdiction Acts (*m*) now applies to all informations and complaints for the recovery before justices of penalties for offences against the Customs and Excise Acts (*n*); but certain special provisions as to customs and excise penalties are still in operation (*o*).

SUB-SECT. 2.—*Local Limits of Jurisdiction.*

As regards commission of offences.

1586. In the case of an offence against a Customs Act, if it was committed on water not within any county of the United Kingdom, or if the officers have any doubt whether such place is within the limits of any county, the offence is to be deemed to have been committed on the high seas, and for the purpose of founding jurisdiction is to be taken to have been committed where it actually was committed or arose, or where the person complained against may be or be brought (*p*). In the case of an offence against an Excise Act, the information may be exhibited and the prosecution take place before justices having jurisdiction either in the place where the offence was committed or where the offender happens to be found (*q*).

As regards justices' jurisdiction.

1587. Where any person is brought before any justice for an offence against a Customs Act, and the justice before whom he is brought has no jurisdiction to hear the complaint, he may order

(*k*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 4 (2); see p. 560, *ante*.

(*l*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 94.

(*m*) 11 & 12 Vict. c. 43; 42 & 43 Vict. c. 49; see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.* This does not interfere with the jurisdiction of the Revenue side of the King's Bench Division (see p. 737, *ante*) in all matters touching the revenues of the Crown (*A.-G.* v. *Kingston* (1841), 8 M. & W. 163; *Smith* v. *Cameron* (1845), 9 Jur. 405; *A.-G.* v. *Halling* (1846), 15 M. & W. 687; *Adams* v. *Fremantle* (1848), 2 Exch. 453; *Mountjoy* v. *Wood* (1856), 1 H. & N. 58).

(*n*) Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 53.

(*o*) Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 8; *R.* v. *Ingham* (1888), 21 Q. B. D. 47. Uniformity of action and procedure under the Customs and Excise Acts has been established by the Finance Act, 1908 (8 Edw. 7, c. 16), s. 4, and the Excise Transfer Order, 1909 (Stat. R. & O. 1909, p. 239) (see *ibid.*, rr. 23—26), made thereunder, amalgamating the two departments of Customs and Excise.

(*p*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 229. Any indictment, prosecution, or information which may be instituted or brought under the direction of the Commissioners of Customs and Excise for offences against the Customs Acts may be tried and determined in any county of that part of the United Kingdom within which the offence was committed (*ibid.*, s. 258). A revenue penalty sued for in the High Court may be proceeded for at any sitting of the court (*R.* v. *Morse* (1848), 3 Exch. 223).

(*q*) Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 65.

SECT. 2. In Courts of Summary Jurisdiction.

such person to be detained for a reasonable time pending the receipt of an order of the Commissioners (*r*). If the attendance of a justice having jurisdiction in the county where the offence was committed cannot be conveniently obtained for the hearing, any magistrate of any neighbouring or adjoining county (*s*) to that in which the offence was deemed to have been committed may hear and determine any information in reference to the offence exhibited before him (*t*).

Death of justice before hearing.

1588. If a justice before whom an information in an excise case has been exhibited, or before whom any proceedings have been taken on an information, dies before the information has been heard and determined, or before any judgment has been given on the proceedings, as the case may be, his death does not invalidate the proceedings (*a*).

SUB-SECT. 3.—*Personal Limitations of Jurisdiction.*

Disqualification of justice.

1589. No person who is employed in the collection or management of excise may sit as justice at the hearing of an excise case; and no person carrying on a business subject to the laws of excise may sit as justice in any case which relates to the trade or business in which he is engaged (*b*).

SUB-SECT. 4.—*Institution of Proceedings.*

Order of Commissioners.

1590. Proceedings for the recovery of a customs or excise penalty can be instituted only by order of the Commissioners of Customs and Excise and in the name of an officer, or, in England, in the name of the Attorney-General (*c*), except where, in the case of an offence under one of the Acts imposing the local taxation licences, the information is laid in the name of the appropriate officer of a county council (*d*), or where proceedings are taken by an officer of

(*r*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 197. If any person liable to be detained under any Act relating to customs is not detained at the time, or having been detained escapes from custody, he may afterwards at any time within three years from the date of the offence be detained at any place in the United Kingdom and dealt with as if he had been detained at the time of committing the offence (*ibid.*, s. 199).

(*s*) Including a borough having a separate commission of the peace and situate geographically within the county in which the offence was deemed to have been committed (Revenue Act, 1883 (46 & 47 Vict. c. 55), s. 8).

(*t*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 230.

(*a*) Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 67. Should a justice die after having part heard the case, another taking his place would not be able to decide it on the evidence given before the deceased; the witnesses would have to give their evidence afresh (*Re Guerin* (1888), 53 J. P. 468).

(*b*) Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 68. Any proceedings in which an official or trader takes part contrary to this restriction may be declared void (*Waite* v. *M'Intosh* (1891), 28 Sc. L. R. 424); and see title MAGISTRATES, Vol. XIX., p. 556.

(*c*) Customs and Inland Revenue Act, 1879 (42 & 43 Vict. c. 21), s. 11; Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 21; Finance Act, 1908 (8 Edw. 7, c. 16), s. 4.

(*d*) Order in Council dated the 19th October, 1908 (Stat. R. & O., 1908,

the peace authorised to sue for the recovery of a fine incurred for keeping a dog without a licence (*e*).

SECT. 2. In Courts of Summary Jurisdiction.

1591. But a court of summary jurisdiction may proceed to hear a case without the information or direction of the Commissioners where the offence is one against a Customs Act and is in respect of goods other than spirits, tobacco, or saccharine, or where, being spirits, tobacco, or saccharine, the quantity in respect of which the charge is brought is less than 5 gallons of spirits, 20 lbs. of tobacco, or 5 lbs. of saccharine (*f*).

When information unnecessary.

SUB-SECT. 5.—*Conduct of Proceedings.*

1592. Any solicitor, officer, or other person employed or authorised by the Commissioners of Customs and Excise or by their solicitor may prosecute, conduct, or defend any information or complaint before a justice of the peace in the United Kingdom in any matter relating to the revenue of customs or excise (*g*).

Right of audience.

SUB-SECT. 6.—*Service of Summons.*

1593. A summons issued by a justice in a customs or excise case may be served personally by an officer of customs and excise; and if personal service cannot be effected it is sufficient service if, in a customs case, the summons is left at the defendant's last known place of abode in the United Kingdom, or on board any ship to which he may belong or may have lately belonged, or if, in an excise case, a copy of the summons is affixed upon some conspicuous part of the office of customs and excise near to which the offence was committed (*h*).

Mode of service.

SUB-SECT. 7.—*Evidence.*

1594. In proceedings relating or incident to any customs or excise seizure, penalty, or forfeiture, orders issued by the Commissioners may be proved by production of any letter or instructions signed by a secretary or assistant secretary, and addressed to any officer of customs and excise, or to the officials generally, for their guidance in such matters (*i*).

Proof of orders of Commissioners.

p. 470), made under the Finance Act, 1908 (8 Edw. 7, c. 16), s. 4; and see p. 684, *ante*.

(*e*) Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 23; and see note (*m*), p. 684, *ante*.

(*f*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 233; Revenue Act, 1906 (6 Edw. 7, c. 20), s. 5.

(*g*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 273; Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 27; Excise Transfer Order, 1909, r. 10. A general authority to an official to act on behalf of the Commissioners is sufficient (*R.* v. *Turner* (1894), 58 J. P. 320). No certificate need be taken out by such person (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 43 (3); and see note (*n*), p. 723, *ante*).

(*h*) Excise Management Act, 1834 (4 & 5 Will. 4, c. 51), s. 19; Excise Management Act, 1841 (4 & 5 Vict. c. 20), s. 31; Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 227. For the ordinary procedure, see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.*

(*i*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 262; Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 71; Inland Revenue Act,

SECT. 2. In Courts of Summary Jurisdiction.

Excise survey books.

1595. Excise survey books are of themselves evidence of the facts entered therein so far as they relate to a defendant's trade which is the subject of such entries, and the officer who made them need not be called to prove them even though he is in court (*k*).

Burden of proof.

1596. In any proceedings instituted for the recovery of penalties in respect of goods claimed to be forfeited for non-payment of duty, the burden is upon the defendant to prove that duty has been paid, or that the goods or commodities seized as forfeited are not of the sort or kind alleged in the information, or that, in the case of imported goods, they have been lawfully imported or unshipped, and he must show the place from which the goods were brought (*l*). A tobacco manufacturer charged with having on his premises sugar or other prohibited articles is required to prove that they were there for the ordinary use of his family (*a*); and where proceedings are taken to recover the penalty in respect of the unlicensed sale of tobacco in a railway carriage, omnibus, stage coach, or tramway car, it rests with the defendant to prove the proprietorship of the vehicle (*b*). If any act is done for the doing of which a licence is required, upon proof that the act was committed, the burden is cast upon the person charged with doing the act to prove that he held the necessary licence in force at the time (*c*).

Evidence of witnesses.

1597. Where during the course of the hearing of a case under any revenue statute the witnesses have been ordered to leave the court, the evidence of a witness who had remained in court cannot be admitted (*d*). A witness in a revenue case cannot be asked if he is the informer (*e*), nor can he be asked who is the informer (*f*).

SUB-SECT. 8.—*Joint Offenders.*

Proceedings against joint offenders.

1598. Where under a Customs or Excise Act a penalty is jointly and severally incurred by every person committing an offence, and

1890 (53 & 54 Vict. c. 21), s. 24; *Hargreaves* v. *Hilliam* (1894), 58 J. P. 655; *Dyer* v. *Tully*, [1894] 2 Q. B. 794. As to evidence generally, see title EVIDENCE, Vol. XIII., pp. 415 *et seq.*

(*k*) *R.* v. *Grimwood* (1815), 1 Price, 369. As to facts proved by excise entries, see p. 611, *ante*.

(*l*) Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 76; Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 259; see *A.-G.* v. *Siddon* (1830), 1 Cr. & J. 220; and p. 592, *ante*.

(*a*) Tobacco Act, 1842 (5 & 6 Vict. c. 93), s. 5; *Lockwood* v. *A.-G.* (1842), 10 M. & W. 464, Ex. Ch. The same burden of proof is on a beer dealer or retailer charged under the Finance Act, 1896 (59 & 60 Vict. c. 28), s. 11, with having sugar or any saccharine substance in his possession; see pp. 650, 652, 653, *ante*.

(*b*) Revenue Act, 1884 (47 & 48 Vict. c. 62), s. 12 (5); Finance Act, 1897 (60 & 61 Vict. c. 24), s. 6. On any question as to the accuracy of the description of spirits on a permit or certificate it rests with the owner or claimant to prove that the spirits correspond with the description (Spirits Act, 1880 (43 & 44 Vict. c. 24), s. 105 (9)).

(*c*) *R.* v. *Turner* (1816), 5 M. & S. 206; *R.* v. *Hanson* (1821), Paley on Summary Convictions, 2nd ed., p. 45; *R.* v. *Gilroys* (1866), 4 Macph. (Ct. of Sess.) 656; *Campbell* v. *Strangeways* (1877), 42 J. P. 39.

(*d*) *A.-G.* v. *Bulpit* (1821), 9 Price, 4; *Parker* v. *M'William* (1830), 6 Bing. 683.

(*e*) *A.-G.* v. *Briant* (1846), 15 M. & W. 169.

(*f*) *R.* v. *Akers* (1790), 6 Esp. 125, n.

such offence is committed by several persons jointly, such persons may be proceeded against either jointly or severally, as the Commissioners may deem expedient (*g*).

SUB-SECT. 9.—*Mitigation of Penalty.*

When mitigation permissible.

1599. On conviction of a second or subsequent offence against an Excise Act, the justices may mitigate the penalty to not less than one-fourth (*h*), except where the statute prescribes a fine of double the value of the duties unpaid, or the penalty fixed is a fine recoverable on arrest followed by committal to prison in default of immediate payment, and a special power to mitigate is not given, in which case the full penalty must be imposed (*i*).

SUB-SECT. 10.—*Costs.*

Costs.

1600. In proceedings for revenue penalties costs are given to and against the Crown in the same way as in suits between private individuals (*k*).

SUB-SECT. 11.—*Appeals.*

Appeals.

1601. An officer exhibiting an information before a justice or justices in an excise case may appeal to quarter sessions; and, on such appeal, the court of quarter sessions may in their discretion state the facts by way of further appeal to the High Court (*l*).

(*g*) Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 70; Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 222. Each is liable to the penalty imposed (*R.* v. *Dean* (1843), 12 M. & W. 39; and see *A.-G.* v. *Roberts and Ellis* (1855), 4 W. R. 7). Whether the parties are proceeded against together or separately, there should be separate convictions against each (*R.* v. *Littlechild* (1871), L. R. 6 Q. B. 293; *R.* v. *Littlechild*, *R.* v. *Heslop* (1871), 35 J. P. 661).

(*h*) Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 78; *Murray* v. *Thompson* (1888), 22 Q. B. D. 142; *Phillips* v. *Stephens* (1898), 79 L. T. 280; and see *Lord Advocate* v. *Stewart* (1899), 63 J. P. 311. In the case of a first offence the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 4, applies (*R.* v. *Blaby*, [1894] 2 Q. B. 170, C. C. R.).

(*i*) Excise Management Act, 1834 (4 & 5 Will. 4, c. 51), s. 20. The Commissioners or the Treasury may remit or mitigate any fine (Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 209; Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 35). In the case of the local taxation licences collected by the councils of the counties and county boroughs the power to remit or mitigate any fine rests with the proper council (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 20 (4); Order in Council of the 19th October, 1908 (Stat. R. & O., 1908, p. 470); see p. 684, *ante*.

(*k*) *Thomas* v. *Pritchard*, [1903] 1 K. B. 209; *Edinburgh Life Assurance Co.* v. *Lord Advocate*, [1910] A. C. 143, H. L.; and see title CROWN PRACTICE, Vol. X., p. 26. As to costs generally, see titles PRACTICE AND PROCEDURE, Vol. XXIII., pp. 176 *et seq.*; SOLICITORS.

(*l*) Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 84; Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 2. As to the ordinary procedure on appeals from courts of summary jurisdiction, see title MAGISTRATES, Vol. XIX., pp. 642 *et seq.*

Part XII.—Expenditure of the Revenue.

SECT. 1. Consolidation Fund Services.

SECT. 1.—*Consolidated Fund Services.*

Charges on the Consolidated Fund.

1602. The Consolidated Fund Services (*m*) comprise: (1) the permanent annual charge for the National Debt (*n*); (2) the charges for the King's civil list (*o*); (3) annuities to various members of the Royal Family (*p*); (4) pensions for naval, military, and political services (*q*); (5) judicial pensions in England, Scotland, and Ireland (*r*);

(*m*) As to distinction between Consolidated Fund and Supply Services, see note (*q*), p. 538, *ante*.

(*n*) See pp. 753 *et seq.*, *post*.

(*o*) Civil List Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 28); and see title CONSTITUTIONAL LAW, Vol. VII., pp. 108 *et seq.*

(*p*) Namely, to trustees for His Majesty's sisters (Civil List Act, 1901 (1 Edw. 7, c. 4), s. 4) and children, other than the Duke of Cornwall for the time being (Civil List Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 28), s. 5); Queen Alexandra, £70,000 (Civil List Act, 1901 (1 Edw. 7, c. 4), s. 5); the Princess Christian, £6,000 (stat. (1866) 29 & 30 Vict. c. 7); the Duchess of Argyll, £6,000 (stat. (1871) 34 & 35 Vict. c. 1); the Duke of Connaught and Strathearn, £15,000 and £10,000 (stat. (1871) 34 & 35 Vict. c. 64; Duke of Connaught and of Strathearn (Establishment) Act, 1878 (41 & 42 Vict. c. 46)); the Duchess of Edinburgh, £6,000 (stat. (1873) 36 & 37 Vict. c. 80); the Duchess of Albany, £6,000 (Duke of Albany (Establishment) Act, 1882 (45 & 46 Vict. c. 5)); Princess Henry of Battenberg, £6,000 (stat. (1885) 48 & 49 Vict. c. 24); Princess Augusta Caroline of Cambridge, Duchess of Mecklenburg-Strelitz, £3,000 (stat. (1843) 6 & 7 Vict. c. 25); and see title CONSTITUTIONAL LAW, Vol. VI., p. 365 *et seq.*

(*q*) (1) Naval and military, namely, the heirs of the Duke of Schomberg in perpetuity, £720 (1 Geo. 1, No. 78); Revenue (Transfer of Charges) Act, 1856 (19 & 20 Vict. c. 59)); the heirs male of Lord Rodney, to whom the title of Lord Rodney descends, £2,000 (stat. (1793) 33 Geo. 3, c. 77); the person to whom the title of Earl Nelson descends, £5,000 (stat. (1806), 46 Geo. 3, c. 146); also the following whilst they continue capable of taking effect: Lord Seaton for the life of the present baron, £2,000 (stat. (1840) 3 & 4 Vict. c. 11); the present Viscount Hardinge, £3,000 (stat. (1846) 9 & 10 Vict. c. 31); Viscount Gough for life, £2,000 (stat. (1846) 9 & 10 Vict. c. 32); Lord Raglan for the life of the present baron, £2,000 (stat. (1855) 18 & 19 Vict. c. 64); Lord Napier of Magdala for the life of the present baron, £2,000 (stat. (1868) 31 & 32 Vict. c. 91): (2) political and civil service, namely, first, second, and third class pensions under the Political Offices Pensions Act, 1869 (32 & 33 Vict. c. 60); pensions granted by special Acts, *e.g.*, ex-Comptroller and Auditor-General and Assistant Comptroller and Auditor (Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39); and see p. 541, *ante*); also the following whilst they continue capable of taking effect:—the Countess of Mayo for life, £1,000 (stat. (1872) 35 & 36 Vict. c. 56).

(*r*) Namely, in England, ex-Lord Chancellors, £5,000 (Judges' Pensions Act, 1799 (39 Geo. 3, c. 110); Lord Chancellor's Pension Act, 1832 (2 & 3 Will. 4, c. 111); see title CONSTITUTIONAL LAW, Vol. VII., p. 57); ex-Lords of Appeal in Ordinary and persons who have held high judicial office (Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 7; Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 14); ex-Lord Chief Justice and Master of the Rolls (Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 14); ex-Lords Justices of Appeal and judges of the High Court, £3,500 (Judicature Act, 1873 (36 & 37 Vict. c. 66); and see title COURTS, Vol. IX., pp. 62, 64); ex-county court judges, £1,000 (County Courts Act, 1888 (51 & 52 Vict. c. 43); and see title COUNTY COURTS, Vol. VIII.,

(6) various miscellaneous civil list pensions (*s*); (7) compensation, if any, payable to certain former public officers and private individuals in respect of fines, fees, and other emoluments of which they were deprived by a number of statutes, the last of which was passed in 1857 (*t*); (8) salaries of the Speaker of the House of Commons (*a*), the Lord Lieutenant of Ireland (*b*), the Comptroller and Auditor-General and Assistant Comptroller and Auditor (*c*); (9) salaries of the various members of the English judiciary, namely, the Lord Chancellor (*d*), the Lords of Appeal in Ordinary (*e*), and other paid members of the Judicial Committee of the Privy Council (*f*); the ordinary judges of the Court of Appeal (*g*); the

p. 417): in Scotland, ex-judges of the Court of Session, three-fourths of their former salary (Judges' Pensions (Scotland) Act, 1808 (48 Geo. 3, c. 145)); ex-sheriffs and sheriffs' substitutes (under the Sheriff Courts (Scotland) Acts, 1838 (1 & 2 Vict. c. 119), 1853 (16 & 17 Vict. c. 80), and 1907 (7 Edw. 7, c. 51); Sheriffs Tenure of Office (Scotland) Act, 1898 (61 & 62 Vict. c. 8)); ex-judges' clerks (Court of Session (No. 2) Act, 1838 (1 & 2 Vict. c. 118), s. 17): in Ireland, ex-Lord Chancellors (stat. (1800) 40 Geo. 3, c. 69 (Irish)); ex-Vice-Chancellors (Chancery (Ireland) Act, 1867 (30 & 31 Vict. c. 44), s. 22); ex-Lords of Appeal and judges of the High Court (Judicature Act (Ireland), 1877 (40 & 41 Vict. c. 57), s. 19; Judicature (Ireland) Act, 1907 (7 Edw. 7, c. 44)); ex-chairmen of quarter sessions (Chairman of Quarter Sessions (Ireland) Act, 1858 (21 & 22 Vict. c. 88); County Officers and Courts (Ireland) Act, 1877 (40 & 41 Vict. c. 56), s. 82).

(*s*) Namely, pensions formerly on the civil lists of George IV. and William IV. (Pensions Act, 1838 (1 & 2 Vict. c. 95)); retired allowances to members of the households of the late Queen Victoria and King Edward, or granted under the Civil List Acts, 1837 (1 & 2 Vict. c. 2), 1901 (1 Edw. 7, c. 4), and 1910 (10 Edw. 7 & 1 Geo. 5, c. 28).

(*t*) See Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74); stat. (1835) 5 & 6 Will. 4, c. 82, s. 7; County Courts Act, 1846 (9 & 10 Vict. c. 95), s. 34, Sched.; Court of Probate Act, 1857 (20 & 21 Vict. c. 77), ss. 103, 105, 112; Probates and Letters of Administration Act (Ireland), 1857 (20 & 21 Vict. c. 79), ss. 108, 110, 112, 113, 119, 120; Common Law Courts (Ireland) Act, 1844 (7 & 8 Vict. c. 107; County Courts Act, 1849 (12 & 13 Vict. c. 101). As to compensation for abolition of office generally, see title PUBLIC AUTHORITIES AND PUBLIC OFFICERS, Vol. XXIII., pp. 352 *et seq.*

(*a*) £5,000 per annum (House of Commons Officers' Act, 1834 (4 & 5 Will. 4, c. 70), s. 1); and see title PARLIAMENT, Vol. XXI., p. 663, note (*i*).

(*b*) £20,000 per annum (Lord Lieutenants' and Lord Chancellors' Salaries (Ireland) Act, 1832 (2 & 3 Will. 4, c. 116)).

(*c*) £2,000 and £1,500 respectively (Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), s. 4); see p. 541 *ante*.

(*d*) Such salary as together with that payable in respect of his office as Speaker of the House of Lords makes up £10,000 per annum (Court of Chancery Act, 1852 (15 & 16 Vict. c. 87), s. 16; Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 12); and see title CONSTITUTIONAL LAW, Vol. VII., pp. 56, 57. Of this sum £4,000 is borne on the vote for House of Lords' offices (see Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons), No. 169, 1912), p. 56).

(*e*) £6,000 per annum (Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 6); and see title COURTS, Vol. IX., p. 23.

(*f*) Namely, two former judges in the East Indies whilst sitting as members of the Judicial Committee, £400 per annum each, or £800 per annum to one such judge if there be only one sitting (Judicial Committee Act, 1833 (3 & 4 Will. 4, c. 41), s. 30; Appellate Jurisdiction Act, 1887 (50 & 51 Vict. c. 70), s. 4); and see title COURTS, Vol. IX., p. 27.

(*g*) £5,000 per annum (Judicature Acts, 1873 (36 & 37 Vict. c. 66),

SECT. 1. Consolidation Fund Services.

Lord Chief Justice (*h*); the Master of the Rolls (*i*); the judges of the Chancery, King's Bench, and Probate, Divorce, and Admiralty Divisions of the High Court of Justice (*k*); county court judges (*l*); metropolitan police court magistrates and certain stipendiary magistrates (*m*); (10) salaries of the Scottish judiciary, namely, the Lord Justice General and President, the Lord Justice Clerk and President of the Second Division, and the judges of the Court of Session (*n*); Sheriffs of counties, Sheriff-substitutes (*o*), and the Sheriff and Sheriff's clerk of Chancery (*p*); (11) salaries of the judiciary in Ireland, namely, the Lord Chancellor (*q*), Lord Chief Justice (*r*), Lord Chief Baron of the Exchequer (*s*), Master of the Rolls (*t*), and ordinary judges of the Court of Appeal (*a*), and the Chancery and King's Bench Divisions (*b*), the judicial and ordinary

s. 13, 1875 (38 & 39 Vict. c. 77), s. 4, and 1881 (44 & 45 Vict. c. 68), s. 3); Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 14); and see title COURTS, Vol. IX., p. 64.

(*h*) £8,000 per annum (Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 13); and see title COURTS, Vol. IX., p. 62.

(*i*) £6,000 per annum (Court of Chancery Act, 1851 (14 & 15 Vict. c. 83), s. 18; Judicature Acts, 1873 (36 & 37 Vict. c. 66), s. 13, and 1881 (44 & 45 Vict. c. 68), s. 2); and see title COURTS, Vol. IX., p. 62.

(*k*) £5,000 per annum (Judicature Acts, 1873 (36 & 37 Vict. c. 66), s. 13; 1877 (40 & 41 Vict. c. 9), ss. 2, 3; 1881 (44 & 45 Vict. c. 68), s. 5; and 1910 (10 Edw. 7 & 1 Geo. 5, c. 12), s. 1 (2); Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 18); and see title COURTS, Vol. IX., p. 62.

(*l*) £1,500 per annum (County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 23); and see title COUNTY COURTS, Vol. VIII., p. 417.

(*m*) Namely, metropolitan police courts, chief magistrate, £1,800, ordinary magistrates £1,500 (Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 3; Metropolitan Police Magistrates Act, 1875 (38 & 39 Vict. c. 3), s. 1); stipendiary magistrate for Chatham and Sheerness, £700 (Chatham and Sheerness Stipendiary Magistrate Act, 1867 (30 & 31 Vict. c. 63)); and see title MAGISTRATES, Vol. XIX., p. 548.

(*n*) Namely, the Lord Justice President, £5,000; Lord Justice Clerk, £4,800; and ordinary judges, £3,600 (Criminal Procedure (Scotland) Act, 1887 (50 & 51 Vict. c. 35), s. 45; Public Revenue and Consolidated Fund Charges Act, 1854 (17 & 18 Vict. c. 94), s. 1, Sched. A.; and see Judges' Salaries (Scotland) Act, 1810 (50 Geo. 3, c. 31), s. 2 (now repealed); Court of Session Act, 1839 (2 & 3 Vict. c. 36)).

(*o*) Namely, such salaries as the Treasury may think fit (Sheriff Courts (Scotland) Act, 1907 (7 Edw. 7, c. 51); Public Revenue and Consolidated Fund Charges Act, 1854 (17 & 18 Vict. c. 94), s. 1, Sched. A; Sheriff Courts (Scotland) Act, 1876 (39 & 40 Vict. c. 70), s. 53).

(*p*) Such salaries as may be fixed by the Treasury (Titles to Land Consolidation (Scotland) Act, 1868 (31 & 32 Vict. c. 101), ss. 54, 55). The pension of the Sheriff of Chancery is to be subject to the same conditions and provisions as sheriffs of counties (*ibid.*, s. 54).

(*q*) £8,000 per annum (Lord Lieutenants' and Lord Chancellors' Salaries (Ireland) Act, 1832 (2 & 3 Will. 4, c. 116), s. 1).

(*r*) £5,000 per annum (Judicature Act (Ireland), 1877 (40 & 41 Vict. c. 57), s. 18; Judicature (Ireland) Act, 1907 (7 Edw. 7, c. 44)).

(*s*) £4,600 per annum (Judicature Act (Ireland), 1877 (40 & 41 Vict. c. 57), s. 18; Judicature (Ireland) (No. 2) Act, 1897 (60 & 61 Vict. c. 66), s. 1).

(*t*) £4,000 per annum (Judicature Act (Ireland), 1877 (40 & 41 Vict. c. 57), ss. 17, 18).

(*a*) £4,000 per annum and £150 circuit allowance provisionally (*ibid.*, s. 18).

(*b*) £3,500 and £150 circuit allowance provisionally (*ibid.*).

members of the Land Commission (*c*), and the chairmen of quarter sessions and recorders (*d*); (12) various miscellaneous salaries, charges, and allowances, namely, augmentation of stipends to Scottish clergy (*e*); allowances to school boards of certain parishes in Scotland (*f*); compensations to libraries under the Copyright Act, 1836 (*g*); salaries of the ecclesiastical establishment in the West Indies (*h*); allowances and payments for expenses to inspectors of anatomy in England and Ireland (*i*); certain salaries formerly charged on the hereditary revenues of Scotland (*k*); charges transferred from the land revenues of the Crown payable to the universities or colleges of Oxford and Cambridge, certain precentors and ministers of Scottish churches, and various schools or persons (*l*); payments to Queen's Colleges in Ireland (*m*); and allowances to sundry persons in Ireland (*n*); (13) payments to the Development and Road Improvement Funds (*o*), and certain other miscellaneous services (*p*).

Payment of charges.

1603. The issues or transfers of moneys required by the Paymaster-General or accounting officers (*q*) to make the payments for these

(*c*) First Judicial Commissioner, £3,500 (Land Law (Ireland) Act, 1881 (44 & 45 Vict. c. 49), s. 41). As to the other Commissioners, see *ibid.*, s. 46; Purchase of Land (Ireland) Act, 1891 (54 & 55 Vict. c. 48), s. 28; Irish Land Act, 1903 (3 Edw. 7, c. 37), s. 86; Land Commissioners (Ireland) Salaries Act, 1892 (55 & 56 Vict. c. 45), ss. 2, 3.

(*d*) As to the Recorder of Dublin (£2,400), see County Officers and Courts (Ireland) Act, 1877 (40 & 41 Vict. c. 56), s. 86 (1); County of Dublin Jurors' and Voters' Revision Act, 1884 (47 & 48 Vict. c. 35), s. 4. As to recorders of Cork and Belfast (£2,000), Galway and Londonderry (£1,500), and all other chairmen of sessions, see County Officers and Courts (Ireland) Act, 1877 (40 & 41 Vict. c. 56), ss. 81, 85, 86.

(*e*) See Teinds Acts, 1810 (50 Geo. 3, c. 84), and 1824 (5 Geo. 4, cc. 72, 90); stat. (1823) 4 Geo. 4, c. 79; Public Revenue and Consolidated Fund Charges Act, 1854 (17 & 18 Vict. c. 94).

(*f*) Highland Schools Act, 1873 (36 & 37 Vict. c. 53), s. 2, Sched.

(*g*) 6 & 7 Will. 4, c. 110, ss. 2, 3.

(*h*) See stat. (1825) 6 Geo. 4, c. 88; stat. (1826) 7 Geo. 4, c. 4; stat. (1842) 5 & 6 Vict. c. 4; West Indies (Salaries) Act, 1868 (31 & 32 Vict. c. 120), ss. 1, 3.

(*i*) Anatomy Act, 1832 (2 & 3 Will. 4, c. 75), s. 6; and see title MEDICINE AND PHARMACY, Vol. XX., p. 341.

(*k*) Lord Lieutenants' and Lord Chancellors' Salaries (Ireland) Act, 1832 (2 & 3 Will. 4, c. 116).

(*l*) Crown Lands Act, 1866 (29 & 30 Vict. c. 62), s. 15 (2). The charges originally transferred are given by Parliamentary Paper (Commons) No. 457 of 1868, but many have since been commuted. For the present charges, see Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons) No. 169 of 1912, p. 53).

(*m*) The Treasury may by warrant direct the issue by quarterly payment of sums not exceeding £7,000 for the stipends, expenses etc., of each of the colleges established under the Act (Queen's Colleges (Ireland) Act, 1845 (8 & 9 Vict. c. 66), s. 12).

(*n*) Irish Charges Act, 1801 (41 Geo. 3, c. 32), ss. 1, 2. For the charges now payable, see Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons) No. 169 of 1912).

(*o*) Development and Road Improvement Funds Act, 1909 (9 Edw. 7, c. 47), s. 2; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 90; Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 18; and see pp. 762—764, *post.*

(*p*) See Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons) No. 169 of 1912, p. 67).

(*q*) See pp. 764, 765, *post.*

SECT. 1. Consolidation Fund Services.

charges are made on Treasury orders out of the credits granted by the Comptroller and Auditor-General (*r*) out of the Consolidated Fund (*s*).

SECT. 2.—*Supply Services.*

Nature of supply services.

1604. The supply services consist of the public expenditure not included in the Consolidated Fund services or in capital expenditure authorised by special Acts. This expenditure is voted annually by Parliament (*t*). It comprises the expenditure on the army, navy, ordnance factories, and civil services (*u*), and is met by appropriations in aid (*v*) or issues to the Paymaster-General or accounting officers (*w*) made upon Treasury orders out of the credits granted by the Comptroller and Auditor-General (*x*).

SECT. 3.—*Pensions and Superannuation Allowances.*

SUB-SECT. 1.—*Under Special Acts.*

Statutory sanction.

1605. Pensions to persons who have been in the service of the Crown are granted either under some special Act of Parliament (*y*), or under the general Superannuation Acts, 1834—1909 (*a*) (hereafter, in this sub-section of the title, referred to as "the Superannuation Acts").

To whom charged.

When granted under a special Act, the terms of the Act commonly regulate the conditions upon which the pension is payable; but, when any superannuation allowance is not otherwise provided for by Parliament, it is charged upon and payable by the department in which the person receiving it has served (*b*).

(*r*) See p. 541, *ante*.

(*s*) Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), s. 13. The form of order is prescribed by Treasury Minute dated the 2nd March, 1867; and see pp. 541, 542, *ante*.

(*t*) See p. 538, *ante*.

(*u*) For detailed accounts of these services, see Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons) No. 169 of 1912).

(*v*) See note (*p*), p. 537, *ante*.

(*w*) See p. 765, *post*.

(*x*) Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), s. 15; and see pp. 541, 542, *ante*.

(*y*) As to pensions granted under special Acts of Parliament, see note (*q*), p. 744, *ante*; and, for political pensions, see title CONSTITUTIONAL LAW, Vol. VII., pp. 29, 30; and for Civil List pensions, *ibid.*, pp. 271—273.

(*a*) 4 & 5 Will. 4, c. 24; 22 Vict. c. 26; 47 & 48 Vict. c. 57; 50 & 51 Vict. c. 67; 55 & 56 Vict. c. 40; 9 Edw. 7, c. 10.

(*b*) Superannuation Act, 1834 (4 & 5 Will. 4, c. 24), s. 26. Provision is made in Class VI. of the Appropriation Act of each year for the sums payable in respect of superannuation allowances; see Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons) No. 169 of 1912), pp. 78, 79; the Appropriation Act, 1912 (2 & 3 Geo. 5, c. 7), Sched. B, Part 10; and see also titles ROYAL FORCES (army, navy, and marine service pensions); COUNTY COURTS, Vol. VIII., pp. 417, 423 (pensions of judges and other officers of county courts).

SUB-SECT. 2.—*Under the Superannuation Acts.* SECT. 3. Pensions and Superannuation Allowances.

1606. The Superannuation Acts (*c*) apply only to persons who have been appointed to their offices directly by the Crown, or who have entered upon them with a certificate from the Civil Service Commissioners (*d*). The Treasury may, however, by order or warrant relieve any person from the disability due to want of a certificate (*e*). Personal application.

1607. The Superannuation Acts (*c*) do not confer any right to a pension or rating allowance or to compensation for past services (*f*); and the decision of the Treasury is final on any question arising in any department of the public service as to the claim of a person or class of persons to superannuation allowance (*g*). Statutory restrictions on right to superannuation.

No superannuation allowance may be granted to any person under sixty years of age, unless upon a medical certificate to the satisfaction of the Treasury that he is incapable from infirmity of mind or body of discharging the duties of his office, and that such infirmity is likely to be permanent (*h*). Age limit.

Except in the case of a head officer of a department, the full superannuation is not to be granted to any person except on the production of a certificate of the head officer of his department that he has served with diligence and fidelity (*i*). Certificate of efficiency.

1608. The ordinary rate of superannuation allowance in the case of persons who entered the service of the Crown subsequent to the 19th April, 1859 (*k*), and before the 20th September, 1909, is as follows (*l*):—If the person has served ten years and upwards, but Rates of superannuation.

(*c*) See note (*a*), p. 748, *ante*.

(*d*) Superannuation Act, 1859 (22 Vict. c. 26), s. 17; and see Treasury Minute dated 14th June, 1859, clause iv. In whatever way the appointment is made, any person employed in the service of the Crown holds his appointment during the pleasure of the Crown unless there is any statutory provision to the contrary (*Re Tuffnell* (1876), 3 Ch. D. 164; *Grant* v. *Secretary of State for India* (1877), 2 C. P. D. 445; *Shenton* v. *Smith*, [1895] A. C. 229, P. C.; *Dunn* v. *R.*, [1896] 1 Q. B. 116, C. A.; *Worthington* v. *Robinson* (1896), 75 L. T. 446; and see titles CONSTITUTIONAL LAW, Vol. VII., pp. 271 *et seq.*; PUBLIC AUTHORITIES AND PUBLIC OFFICERS, Vol. XXIII., pp. 314 *et seq.*

(*e*) Superannuation Act, 1884 (47 & 48 Vict. c. 57), s. 2; and see the Telephone Transfer Act, 1911 (1 & 2 Geo. 5, c. 26), s. 6, under which the transferred officers of the National Telephone Co., Ltd., are, subject to certain conditions, to be regarded as permanent civil servants to whom the Superannuation Acts apply (see note (*a*); and see title TELEGRAPHS AND TELEPHONES.

(*f*) Superannuation Act, 1834 (4 & 5 Will. 4, c. 24), s. 30; and see p. 748, *ante*.

(*g*) Superannuation Acts, 1859 (22 Vict. c. 26), s. 2, and 1887 (50 & 51 Vict. c. 67), s. 9; *Cooper* v. *R.* (1880), 14 Ch. D. 311.

(*h*) Superannuation Act, 1859 (22 Vict. c. 26), s. 10. Persons superannuated under the age of sixty may be required to serve again in any public office or situation for which their previous public services may render them eligible (*ibid.*, s. 11; and see Treasury Minute dated the 10th December, 1892).

(*i*) Superannuation Act, 1859 (22 Vict. c. 26), s. 8.

(*k*) The date of the coming into force of the Superannuation Act, 1859 (22 Vict. c. 26).

(*l*) The date of the coming into force of the Superannuation Act, 1909 (9 Edw. 7, c. 10). But provision is made for the application, subject to

SECT. 3. Pensions and Superannuation Allowances.

less than eleven years, ten-sixtieths of the annual salary and emoluments of his office; if he has served eleven years and under twelve years, eleven-sixtieths; with a further addition of one-sixtieth in respect of each additional year of service, until the completion of a period of service of forty years, when an annual allowance of forty-sixtieths may be granted. No addition is made in respect of any service beyond forty years (*m*).

In the case of persons who entered the service of the Crown since the 20th September, 1909, the rate of superannuation allowance is to be calculated as if the word "eightieth" were substituted for "sixtieth" in the above scale. Provision is made for the further payment to anyone coming under the new scale of an additional allowance by way of a lump sum equal to one-thirtieth of the annual emoluments of his office multiplied by the number of completed years he has served, but not exceeding in any case one and a half times the amount of such salary and emoluments (*n*).

Period of service.

1609. In calculating the period served for superannuation, no period less than a whole year is regarded (*o*).

The same period cannot be reckoned both for the purpose of superannuation allowance and also for the purpose of naval or military non-effective pay (*p*).

Computation upon salary.

1610. Superannuation allowance payable to any person is computed upon the average salary and emoluments enjoyed by him in the three years prior to his retirement, unless he has been at the time of his retirement in the class from which he retires for a period of three years, and has been on a regular scale of salary with increments of definite amounts accruing at definite periods (*q*).

regulations made by the Treasury, of the scale introduced by the Superannuation Act, 1909 (9 Edw. 7, c. 10), to male civil servants who had entered the service prior to the passing of the Act, and who at that date were under sixty years of age (Superannuation Act, 1909 (9 Edw. 7, c. 10), s. 3).

(*m*) Superannuation Act, 1859 (22 Vict. c. 26), s. 2.

(*n*) Superannuation Act, 1909 (9 Edw. 7, c. 10), s. 1. Where a civil servant retires after attaining the age of sixty-five, the lump sum payable to him is reduced by one-twentieth of the whole sum for each completed year he had served after attaining that age (*ibid.*, s. 1 (2)). Regulations have been made applying the new scale to persons who had entered the service prior to the 20th September, 1909, and who desire to come under it. These regulations require a certificate of health in the prescribed form from persons over the age of fifty-five years.

(*o*) Treasury Minute dated the 14th June, 1859, r. 3.

(*p*) Superannuation Act, 1887 (50 & 51 Vict. c. 67), s. 5. When a naval or military officer drawing non-effective pay accepts any civil employment of profit under any public department, he may only do so on condition that no pension shall be granted to him in respect of that employment which when added to his non-effective pay, shall exceed two-thirds of the emoluments of that employment or £1,000 a year, whichever may be the greater (Treasury Rules dated September, 1887, made under the Superannuation Act, 1887 (50 & 51 Vict. c. 67), s. 6); and see, further, p. 753, *post*. As to naval and military pay and pensions, see title ROYAL FORCES.

(*q*) Superannuation Act, 1834 (4 & 5 Will. 4, c. 24), s. 12, as interpreted by the Treasury Minute dated March, 1888. As to the power of the Treasury to decide as to the amount of a superannuation allowance, see *Cooper* v. *R.* (1880), 14 Ch. D. 311; and see also Superannuation Act, 1887 (50 & 51 Vict. c. 67), s. 9.

1611. Continuous and successive services in two or more public offices is reckoned as if the whole service had been in the office from which the person entitled to the pension ultimately retired (*r*). Successive services.

1612. Where a person at the time he becomes a civil servant within the meaning of the Superannuation Acts (*s*) is serving the State in a temporary capacity, the Treasury may direct that his service in that capacity may be reckoned for the purposes of the Superannuation Acts as service in the capacity of a civil servant (*t*). Temporary service.

1613. The Treasury may by order or warrant make special provision for computing the superannuation payable to persons holding professional or other special offices (*u*). Professional and special offices.

1614. The Treasury may grant a retiring allowance to a civil servant removed from his office on the ground of his inability to discharge his duties with efficiency, although he would not be entitled to an allowance under the Superannuation Acts (*a*). Servants removed from office.

(*r*) Superannuation Act, 1892 (55 & 56 Vict. c. 40), s. 1; and see Treasury Rules dated the 20th July, 1892, framed under this provision. "Public office" is for the application of this rule defined as: "Any office or employment, other than office or employment in His Majesty's naval or land forces, service in which qualifies for the grant of a superannuation allowance or gratuity, and the remuneration of which is paid out of: (a) the Consolidated Fund of the United Kingdom; or (b) moneys provided by Parliament, or dealt with as appropriations in aid; or (c) the revenue of India; or (d) the revenue of the Isle of Man; or (e) any fund which, from its being administered by a public department, the Treasury may determine to be a public fund"; and includes the office, existing on the 27th June, 1892, of any prison officer within the meaning of the Prisons Act, 1877 (40 & 41 Vict c. 21), the General Prisons (Ireland) Act, 1877 (40 & 41 Vict. c. 49), and the Prisons (Scotland) Act, 1877 (40 & 41 Vict. c. 53) (Superannuation Act, 1892 (55 & 56 Vict. c. 40), s. 4); and see title PRISONS, Vol. XXIII., pp. 241, 242.

(*s*) See note (*a*), p. 748, *ante*. That is, where he holds his appointment directly from the Crown, or has been admitted with a certificate from the Civil Service Commissioners (Superannuation Act, 1859 (22 Vict. c. 26), s. 17); see note (*d*), p. 749, *ante*.

(*t*) Superannuation Act, 1887 (50 & 51 Vict. c. 67), s. 3.

(*u*) Superannuation Act, 1859 (22 Vict. c. 26), s. 4. In pursuance of this power the Treasury have declared that, for the purpose of computing the amount of the retiring allowance of holders of the following offices, an addition of ten years shall be made to the period actually served: Under Secretaries of State, Assistant Secretary to the Treasury, counsel for drawing bills, solicitors to public departments, police and stipendiary magistrates, chief commissioners of police, medical officers attached to the Privy Council, Chairman of Directors of Convict Prisons, Inspector-General for Art, Director of the National Gallery; and in the case of the holders of the following offices an addition of seven years: legal assistants at either the Board of Trade, Colonial Office, Poor Law Board, or any other departments, directors of convict prisons, commissioners of police, professors and masters of the Royal Military College and similar establishments, medical men giving their whole time to their service, inspectors of mines, factories, coal-mines, anatomy, constabulary, prisons and reformatories, or poor law; and in the case of holders of the following offices an addition of five years: government chaplains of convict prisons, inspectors of schools, or of art, translator at the Foreign Office (Treasury Minute, 14th June, 1859).

(*a*) Superannuation Act, 1887 (50 & 51 Vict. c. 67), s. 2 (1).

SECT. 3. Pensions and Superannuation Allowances.

1615. No pension or other allowance may be received by anyone for non-effective services, civil or military, until he has subscribed a declaration in the form and before one of the persons prescribed by warrant of the Treasury (*b*).

Declaration.

Assignment of pension.

1616. In the absence of express statutory provision, a pension may be assigned by the person to whom it is granted, unless the pension is in the nature of compensation granted on abolition of office (*c*), and the retired official is liable to be recalled for duty (*d*).

Commuted pensions.

1617. The Treasury have power to commute any pension or any portion of any pension granted to (1) officers in His Majesty's naval and land forces; and (2) persons who have held public civil offices, and to whom pensions have been granted in consequence of the abolition or reorganisation of the departments to which they belonged (*e*).

Forfeiture of pension.

1618. Where the holder of a pension in England or Ireland is convicted of treason or felony for which he has been sentenced to death or penal servitude, or any term of imprisonment with hard labour or exceeding twelve months, the pension is forthwith forfeited, unless the holder receives a free pardon from His Majesty within two months after the conviction (*f*); and if a person

(*b*) Appropriation Act, 1912 (2 & 3 Geo. 5, c. 7), s. 6. Where payments are made at more frequent intervals than once a quarter, the Treasury may dispense with the production of more than one declaration in each quarter (*ibid.*).

(*c*) As to this, see title PUBLIC AUTHORITIES AND PUBLIC OFFICERS, Vol. XXIII., pp. 352, 353.

(*d*) See, generally, titles CHOSES IN ACTION, Vol. IV., pp. 400–402; EXECUTION, Vol. XIV., pp. 94, 121, 122; ROYAL FORCES. Pensions granted to servants of the Crown are frequently declared by statute to be incapable of assignment; see, for instance, Naval and Marine Pay and Pensions Act, 1865 (28 & 29 Vict. c. 73), s. 4; Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 3; Army Act (44 & 45 Vict. c. 58), s. 141; Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 9; and as to pensions granted to retired incumbents under the Incumbents Resignation Act, 1871 (34 & 35 Vict. c. 44), s. 10, see title ECCLESIASTICAL LAW, Vol. XI., pp. 630, 631. The prohibition against assignment does not apply to a sum paid by way of commutation of a pension under the Pensions Commutation Act, 1871 (34 & 35 Vict. c. 36) (*Crowe* v. *Price* (1889), 22 Q. B. D. 429). As to the modification of the prohibition by the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 53, where the holder becomes bankrupt, see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 190, 191.

(*e*) Pensions Commutation Act, 1871 (34 & 35 Vict, c. 36); Pensions Commutation Act, 1882 (45 & 46 Vict. c. 44). Commutations take place subject to the regulations made by Treasury Circulars $\frac{11958}{71}$, $\frac{14718}{81}$, and Treasury Minute dated the 28th October, 1882, as amended by Treasury Regulation, dated December, 1883; compare titles METROPOLIS, Vol. XX., pp. 453, 455; POLICE, Vol. XXII., p. 512; and, as to a receiver's powers with regard to pensions, see title RECEIVERS, pp. 368, 369, *ante*. As to compensation for abolition of office, see title PUBLIC AUTHORITIES AND PUBLIC OFFICERS, Vol. XXIII., pp. 352, 353.

(*f*) Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 2. The Act does not apply to Scotland (*ibid.*, s. 33); and see title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 428, 429.

superannuated under the age of sixty, and not having yet attained that age, declines when called upon to fill any public office for which his previous public services render him eligible, or declines or neglects to execute the duties of such office satisfactorily, he forfeits his right to the pension granted to him (*g*).

Officers on half-pay accepting civil post of profit.

1619. An officer who is on the half-pay or retired list, or who has commuted his non-effective pay or retired from the Imperial Forces with a gratuity, must obtain the consent of the Admiralty or the War Office before he accepts any civil employment of profit under the Government of any British possession or of any foreign state. If he fails to obtain such consent or continues to hold such employment after the consent is withdrawn, he is liable to have his non-effective pay suspended or reduced, or, if he has commuted such pay or retired with a gratuity, he is liable to repay to His Majesty the amount of the commutation or gratuity or such portion of it as the Treasury may direct (*h*).

Transfer of office.

1620. The right of any person to superannuation is not lost by his being transferred to some other employment under the Crown (*i*).

SECT. 4.—*The National Debt.*

SUB-SECT. 1.—*Constitution and Amount.*

Constitution of the National Debt.

1621. The National Debt (*k*) of the United Kingdom consists of

(*g*) Superannuation Act, 1859 (22 Vict. c. 26), s. 11.

(*h*) Rules dated September, 1889, made by the Treasury under the Superannuation Act, 1887 (50 & 51 Vict. c. 67) s. 6; and see, further, note (*p*), p. 750, *ante*.

(*i*) Superannuation Act, 1859 (22 Vict. c. 26), s. 12. This applies also to a person appointed to the position of development commissioner (see p. 763, *post*) or member of a Road Board (see p. 764, *post*) with a salary, where such person was at the time of his appointment a civil servant within the meaning of the Superannuation Acts, 1834 to 1909 (Development and Road Improvement Funds Act, 1910 (10 Edw. 7, c. 7), s. 2). In the case of continuous service in two or more public offices the total service is to be reckoned, and the apportionment of superannuation allowance to be paid out of each fund or account is to be fixed in accordance with rules made by the Treasury (Superannuation Act, 1892 (55 & 56 Vict. c. 40), s. 1). These rules are contained in the Treasury Minute dated 20th July, 1892. As to the case where two civil offices under the Imperial Government are held by a person at the same time and the holder retires from one of them while continuing to serve in the other, see Treasury Minute dated 7th December, 1886.

(*k*) The National Debt in its present form had its origin in a loan of £1,200,000 at 8 per cent. made to the Crown in 1694, on the security of the public funds, the subscribers being incorporated as the Bank of England, under the Bank of England Act, 1694 (5 & 6 Will. & Mar. c. 20); see *Bank of England* v. *Anderson* (1837), 3 Bing. (N. C.) 589, *per* TINDAL, C.J., at p. 652; and, as to the Bank of England, see, further, title BANKERS AND BANKING, Vol. I., pp. 570 *et seq.* Further borrowings during the course of the war with France raised the amount of the debt to £14,522,925, at which figure it stood at the Peace of Ryswick in 1697 (Dowell's History of Taxation and Taxes in England, Vol. II., p. 403). During the war of the Spanish Succession further increases were made; and in 1708 the Bank advanced £400,000 to the Government, and at the same time the rate of interest on the debt due to the Bank was reduced to 6 per cent. (stat. (1708) 7 Anne, c. 7). In 1711 the unfunded obligations of the Government to the amount of £10,000,000 were converted into South Sea Stock, the

SECT. 4. The National Debt.

the Funded Debt, the Terminable Annuities, the Unfunded Debt, and certain capital liabilities incurred by the State in respect of undertakings authorised by recent Acts of Parliament. There is,

Government undertaking to pay the company interest at 6 per cent. The war which concluded with the Peace of Utrecht in 1714 added £21,483,098 to the Debt, which at the close of the reign of Anne amounted to £36,175,460 (Dowell's History of Taxation and Taxes in England, Vol. II., p. 43; Fenn on the Funds). In 1716 the Bank of England made a further advance of £2,500,000 to the Government at 5 per cent., and in the same year provision was made for a sinking fund by stat. (1716) 3 Geo. 1 c. 7 (Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons), No. 169 of 1912, p. 89)). In 1720 the Funded Debt was increased by the addition of the stock of the South Sea Company, and in the following year the Bank purchased from the Exchequer what remained of the stock for £3,328,300, bearing interest at 5 per cent. per annum (stat. (1721) 8 Geo. 1, c. 21). At the close of the reign of George I., in 1727, the Debt amounted to £53,979,708, the increase being due to the charging of the stock of the South Sea Company to the Consolidated Fund. Between 1727 and the outbreak of war in 1739 over seven millions were paid off the Debt by the operation of the Sinking Fund. During the course of the war many loans were contracted, chiefly at 4 per cent., and when peace was made at Aix la Chapelle in 1749 the Debt had been increased by £29,173,771 (Dowell's History of Taxation and Taxes in England, Vol. II., p. 403). In 1746 the last of the advances made by the Bank on which interest is still paid was made under the Bank of England Act, 1745 (19 Geo. 2, c. 6) (see Sir John Sinclair's History of the Public Revenue, 3rd ed., 1804, p. 21). In the meantime, in 1742, the interest on the Bank's original capital now amounting to £3,200,000 had been reduced to 3 per cent. (*ibid.*, p. 15). In 1749 a general reduction in the rate of interest payable on the whole of the public debt was provided for; all stock-holders were to receive 4 per cent. until the 25th December, 1750; from that date the rate was to be 3½ per cent. up to the 25th December, 1757, after which the rate was to be 3 per cent. The Seven Years' war, which ended with the Treaty of Paris in 1764, added £59,633,000 to the Debt (Dowell's History of Taxation and Taxes in England, Vol. II., p. 403). Some payments off having been made in the interval, the Debt amounted at the outbreak of the American War in 1775 to £126,842,811. The borrowings due to this war added £117,285,006 to the Debt (*ibid.*, p. 403), the total of which in 1786 reached £238,281,046 (Sir John Sinclair's History of the Public Revenue, 3rd ed., 1804, p. 58). During the Revolutionary War with France £504,889,452 was added to the Debt (Dowell's History of Taxation and Taxes in England, Vol. II., p. 403). The loans, which were at 3 per cent., were issued at a discount, and bonuses in 4 and 5 per cent. stock, as well as terminable annuities, were in some instances given to subscribers. At the close of the war in 1815, the Debt, including the capital value of Terminable Annuities, amounted to about 900 millions. The principal additions to the Debt since that date were 20 millions raised in 1835-6 as compensation to the owners of enfranchised slaves, 30 millions raised to finance the Crimean War in 1854-6, and 162 millions added in connection with the recent wars in South Africa and China. The 3 per cent. Consolidated Stock, the reduced 3 per cents. and the new 3 per cents. (for these stocks, see p. 755, *post*) were by the National Debt (Conversion) Act, 1888 (51 & 52 Vict. c. 2), converted into a new stock bearing interest at 2¾ per cent. until 5th April, 1903, and thereafter at 2½ per cent., and redeemable on and after the 5th April, 1923, at par on such notice, at such times, and in such amounts as Parliament may determine. An option to substitute a specified amount of stock for a rentcharge covenanted to be paid is not affected by the reduction of the rate of interest (*Northumberland (Duke)* v. *Percy*, [1893] 1 Ch. 298); and see National Debt (Conversion) Act, 1888 (51 & 52 Vict. c. 2), ss. 21 (1), 25 (2); *Re Borough's Estate* (1893), 31 L. R. Ir. 244; compare *Re Howell-Shepherd, Churchill* v. *St. George's Hospital*, [1894] 3 Ch. 649.

besides, a contingent liability in respect of loans guaranteed by the British Government not at present involving any charge on the National Exchequer (*l*). On the other hand, the State has certain liquid assets of ascertainable value (*m*), and has also claims in respect of advances made chiefly to or for colonial governments (*n*).

Funded Debt.

1622. The Funded Debt is made up of:—

(1) The 2½ per cent. Consols established by the National Debt (Conversion) Act, 1888 (*o*), and the National Debt Redemption Act, 1889 (*p*). This stock cannot be redeemed before the 5th April, 1923.

(2) The 2¾ per cents., which were created by the National Debt (Conversion of Stock) Act, 1884 (*q*), by which certain stocks previously bearing interest at 3 per cent. were converted into others at a lower rate.

(3) The new 2½ per cents. created in 1853 (*r*) on the conversion of the South Sea Stock, the new South Sea Annuities, and the 3 per cent. Annuities created in 1726 and 1751. The amount of this stock was further added to by the conversion under the National Debt (Conversion of Stock) Act, 1884 (*q*), which created the 2¾ per cent. stock (*s*).

(4) Debts due to the Bank of England, representing advances made either directly to the Exchequer or by the delivery up of Exchequer bills by the bank between the date of its incorporation

(*l*) The capital account of the National Debt was on the 31st March, 1912, as follows:—

I. FUNDED DEBT:			
(a) 2½ per cent. Consols. . . .	554,676,828	16	3
(b) 2¾ per cents.	3,862,266	5	10
(c) 2½ per cents.—new	30,015,127	5	3
(d) Debt due to the Bank of England .	11,015,100	0	0
(e) Debt due to the Bank of Ireland .	2,630,769	4	8
II. TERMINABLE ANNUITIES: Capital Values:			
(a) Annuities under the Acts referred to in note (*c*), p. 756, *post* . . .	15,025,284	0	0
(b) Annuities under the Acts referred to in notes (*d*), (*e*), p. 756, *post* . .	18,019,105	0	0
III. UNFUNDED DEBT:			
(a) Treasury Bills	8,100,000	0	0
(b) Exchequer Bonds	25,000,000	0	0
IV. OTHER CAPITAL LIABILITIES: Under the Acts referred to in note (*i*), p. 756, *post*	50,061,947	0	0
Total gross liabilities . .	718,406,427	12	0

(Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons), No. 169 of 1912), pp. 89—92). The contingent liability in respect of guaranteed loans amounted to £206,853,874 10*s.* 10*d.* (*ibid.*, pp. 98, 99).

(*m*) The estimated value of these on the 31st March, 1912, was £47,750,386 (*ibid.*, p. 92).

(*n*) The amount of the liabilities under this head was £4,550,779 15*s.* (*ibid.*, pp. 94—96).

(*o*) 51 & 52 Vict. c. 2; see note (*k*), p. 753, *ante*.

(*p*) 52 & 53 Vict. c. 4.

(*q*) 47 & 48 Vict. c. 23.

(*r*) By stat. (1853) 16 & 17 Vict. c. 23.

(*s*) National Debt (Conversion of Stock) Act, 1884 (47 & 48 Vict. c. 23).

SECT. 4. The National Debt.

in 1694 (*t*) and the year 1746 (*u*). This debt is repayable at the option of the Government upon twelve months' notice.

(5) Debts due to the Bank of Ireland representing sums placed at the disposal of the Government at various times from the foundation of the Bank in 1782 to the year 1821 (*a*). The debts due to both banks now bear interest at 2½ per cent. per annum (*b*).

Terminable Annuities.

1623. The Terminable Annuities are either:—

(1) Annuities created under Acts passed in 1829, 1833, 1844, 1853, 1864, 1882, and 1888 (*c*); or (2) Annuities created by the National Debt and Local Loans Act, 1887 (*d*), and the Finance Act, 1899 (*e*).

Unfunded Debt.

1624. The Unfunded Debt is made up of: (1) Treasury Bills for Supply, and (2) Exchequer Bonds (*f*). The bills bear interest at various rates fixed by the Treasury; the bonds carry interest either at 2¾ or at 3 per cent. per annum (*g*). The 2¾ per cent. bonds are repayable by annual drawings of £1,000,000 at par and expire on the 18th April, 1915. The 3 per cent. bonds are repayable on the 5th April, 1915 (*h*).

Capital liabilities.

1625. The liabilities incurred by the State in the purchase of works or undertakings are represented by property or rights acquired by the State of the value of which no estimate is obtainable (*i*).

(*t*) By the Bank of England Act, 1694 (5 & 6 Will. & Mar. c. 20).

(*u*) See Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons), No. 169 of 1912), p. 89.

(*a*) Bank of Ireland Act, 1821 (1 & 2 Geo. 4, c. 72); Parliamentary Paper (Commons) No. 169 of 1912, p. 89.

(*b*) In 1892 the rate of interest was reduced from 3 per cent. to 2¾ per cent. up to the 5th April, 1903, and thereafter to 2½ per cent. (Bank Act, 1892 (55 & 56 Vict. c. 48), s. 5).

(*c*) Government Annuities Act, 1829 (10 Geo. 4, c. 24); Savings Bank Acts, 1833 (3 Will. 4, c. 14), and 1844 (7 & 8 Vict. c. 83); Government Annuities Acts, 1853 (16 & 17 Vict. c. 45), 1864 (27 & 28 Vict. c. 43), and 1882 (45 & 46 Vict. c. 51); National Debt (Supplemental) Act, 1888 (51 & 52 Vict. c. 15).

(*d*) 50 & 51 Vict. c. 16.

(*e*) 62 & 63 Vict. c. 9. These consist of: (a) savings bank annuities expiring in 1913, in lieu of annuities expired 1901-2; (b) savings bank annuities expiring in 1924-5, in lieu of stock cancelled under the Finance Act, 1899 (62 & 63 Vict. c. 9); and (c) book debt annuities expiring in 1924 in lieu of book debts cancelled under the Finance Act, 1899 (62 & 63 Vict. c. 9) (Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons) No. 169 of 1912), p. 90).

(*f*) See pp. 547, 548, *ante*.

(*g*) See Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons) No. 169 of 1912), pp. 90, 91; and pp. 547, 548, *ante*. On the 31st March, 1912, there were Exchequer Bonds outstanding to the amount of four millions at 2¾ per cent., and twenty-one millions at 3 per cent. (Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons) No. 169 of 1912), pp. 90, 91).

(*h*) These were issued under the War Loan (Redemption) Act, 1910 (10 Edw. 7, c. 2), to replace War Stock and Bonds paid off in the year ended 31st March, 1911.

(*i*) These were incurred under the Telegraph Acts, 1892—1907 (55 & 56 Vict. c. 59; 59 & 60 Vict. c. 40; 60 & 62 Vict. c. 33; 62 & 63 Vict. c. 38; 4 Edw. 7, c. 3; and 7 Edw. 7, c. 6); Uganda Railway Acts, 1896—1902 (59 & 60 Vict. c. 38; 63 & 64 Vict. c. 11; 2 Edw. 7, c. 40); Public Offices

Guarantee in respect of loans.

1626. The guarantee of the British Government extends in some cases to both the principal and the interest, as in the case of the Transvaal Loans (£40,000,000) (*k*), and the Guaranteed Irish Land Stock (£11,485,662); while in other cases, such as the Local Loans 3 per cent. Stock (£71,058,813), the Guaranteed 2¾ per cent. Irish Land Stock (£53,319,974), and the Guaranteed 3 per cent. Irish Land Stock (£11,966,124), the interest only is guaranteed by the State (*l*). In all cases there is some primary security for the loan.

Nominal liabilities.

1627. In addition to these there are certain nominal liabilities in respect of moneys due to suitors in the courts and appropriated by authority of Parliament, unclaimed dividends at the banks paid into the Exchequer, unclaimed annuities and prizes (*m*). The State may also be called upon to make good out of the Consolidated Fund any amount by which the funds held by the National Debt Commissioners may prove insufficient to meet the claims of depositors in the Post Office Savings Bank or of the trustees of trustee savings banks and friendly societies (*n*).

Stock accounts.

1628. The account of the stocks forming the National Debt is kept by the Bank of England (*o*); and the Bank is to continue a corporation for that purpose until all stock is duly redeemed by Act of Parliament (*p*).

Transfer books.

1629. Books are kept by the Bank in which all transfers of stock are recorded, a separate register being kept of stock transferable by deed (*q*).

(Acquisition of Site) Act, 1895, Session 2 (59 Vict. c. 5); Public Offices (Whitehall) Site Act, 1897 (60 & 61 Vict. c. 27); Royal Niger Company Act, 1899 (62 & 63 Vict. c. 43); Naval Works Acts, 1895—1905 (58 & 59 Vict. c. 35; 59 & 60 Vict. c. 6; 5 Edw. 7, c. 20); Military Works Acts, 1897 to 1903 (60 & 61 Vict. c. 7; 62 & 63 Vict. c. 41; 1 Edw. 7, c. 40; 3 Edw. 7, c. 29); Land Registry (New Buildings) Act, 1900 (63 & 64 Vict. c. 19); Pacific Cable Act, 1901 (1 Edw. 7, c. 31); Public Offices Site (Dublin) Act, 1903 (3 Edw. 7, c. 16); Public Buildings Expenses Act, 1903 (3 Edw. 7, c. 41); Cunard Agreement (Money) Act, 1904 (4 Edw. 7, c. 22); and the Telephone Transfer Act, 1911 (1 & 2 Geo. 5, c. 26) (Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons) No. 169 of 1912), p. 92).

(*k*) This is secured on the revenues of the colony, and its repayment provided for by a sinking fund (*ibid.*, pp. 98, 99).

(*l*) *Ibid.*

(*m*) The moneys due to suitors and unclaimed have been paid over to the National Debt Commissioners under Acts passed from time to time, but chiefly under the Courts of Justice (Salaries and Funds) Act, 1869 (32 & 33 Vict. c. 91), and the Finance Act, 1904 (4 Edw. 7, c. 7), s. 10; and see p. 760, *post*.

(*n*) See titles BANKERS AND BANKING, Vol. I., pp. 576, 579; FRIENDLY SOCIETIES, Vol. XV., pp. 167, 168.

(*o*) Or at the Bank of Ireland in the case of Irish stockholders (National Debt Act, 1870 (33 & 34 Vict. c. 71), s. 13). For payment made to the Banks for their services in connection with the accounts, see p. 548, *ante*.

(*p*) National Debt Act, 1870 (33 & 34 Vict. c. 71), s. 72.

(*q*) *Ibid.*, s. 22, as amended by the Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 17. *Primâ facie* a transfer allowed by the Bank is valid, and if it takes place *bonâ fide* and for value the Bank is estopped from saying it is invalid (*Bank of England* v. *Cutler*, [1908] 2 K. B. 208, C. A.).

SECT. 4. The National Debt.

Transfers.

The transfer of stock other than stock registered as transferable by deed is effected by the signature of the transferee in the book attested by two witnesses, and, except where otherwise provided for by Parliament, no other mode of transfer is good (*r*). The conditions under which any stock may be registered as transferable by deed and the manner in which a transfer of such stock may take place are provided for by regulations made by the Bank with the concurrence of the Treasury (*s*).

The Bank may require evidence of title before allowing a transfer (*t*). It must require the production of probate or letters of administration before paying over the stock of a deceased stockholder to his executor or administrator (*u*).

No stamp duty is payable in respect of any deed of transfer of stock (*v*).

Transfer lists.

Where stock is so transferred, it is the duty of the Bank immediately after the transfer to record in a list kept for the purpose the name and description of the person in whose name the stock stood in its books before the transfer, with the particulars of the amount transferred. Lists so made out are to be open to inspection during the usual business hours (*a*).

Payment of dividends.

1630. When the Treasury imprest for the payment has been issued, the Bank must pay out of the Consolidated Fund dividends due to the persons appearing from its books to be entitled to the stock (*b*).

Unclaimed dividends.

1631. All stock on which no dividend is claimed for ten years before the last day on which a dividend becomes payable, and not being stock the payment of dividends on which has been restrained

(*r*) National Debt Act, 1870 (33 & 34 Vict. c. 71), s. 22; and see *Oldham Corporation* v. *Bank of England*, [1904] 2 Ch. 716, C. A., for an instance of a transfer by direct operation of an Act of Parliament. If a stockholder refuses to sign, the court will nominate a person to carry out the transfer (*Savage* v. *Norton*, [1908] 1 Ch. 290). The stock vests on transfer before acceptance by the transferee (*R.* v. *Gade* (1796), 2 Leach, 732).

(*s*) Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 17 (1); and see Treasury Regulations dated the 3rd August, 1912 (Stat. R. & O., 1912, No. 1192).

(*t*) National Debt Act, 1870 (33 & 34 Vict. c. 71), s. 18.

(*u*) *Ibid.*, s. 17. The Bank may then transfer to the executor or administrator notwithstanding any specific bequest of the stock (*ibid.*, s. 23). As to the effect of a re-transfer of stock on the faith of the probate of a forged will, see *Ex parte Jolliffe* (1845), 8 Beav. 168. The Bank may now be compelled to transfer stock into the joint names of a corporation and an individual (National Debt (Stockholders Relief) Act, 1892 (55 & 56 Vict. c. 39), s. 6). For the general rule of law in such cases, see *Law Guarantee and Trust Society* v. *Bank of England* (*Governor & Co.*) (1890), 24 Q. B. D. 406. On a bequest of stock to the Government "in exoneration of the National Debt," it will be transferred to such person as the Crown under the Sign Manual may appoint (*Newland* v. *A.-G.* (1809), 3 Mer. 684).

(*v*) Finance Act, 1911 (1 & 2 Geo. 5, c. 48), s. 17 (2); see p. 721, *ante*.

(*a*) National Debt Act, 1870 (33 & 34 Vict. c. 71), s. 52. They are only open to persons who can show a *bonâ fide* interest (*R.* v. *Bank of England* (*Governor, etc.*), [1891] 1 Q. B. 785).

(*b*) National Debt Act, 1870 (33 & 34 Vict. c. 71), s. 15. The Banks of England and Ireland may with the concurrence of the Treasury make regulations for the payment of dividends (National Debt Act, 1889 (52 & 53 Vict. c. 6), s. 4).

by the court, must be transferred in the books of the Bank to the National Debt Commissioners (*c*).

Re-transfer of stock.

1632. Any person legally entitled may apply to the court for an order re-transferring stock with the dividends upon it (*d*) which had been transferred to the National Debt Commissioners (*e*).

Where proceedings for this purpose are taken the Attorney-General represents the Crown both as *parens patriæ* and in its capacity as beneficiary (*f*).

In the absence of special circumstances, the taxed costs of the Attorney-General and the National Debt Commissioners are directed to be paid out of the fund recovered in an action for the re-transfer of stock (*g*).

SUB-SECT. 2.—*Reduction.*

How effected.

1633. The reduction of the National Debt is effected partly (1) by the allocation to that object of certain receipts in the nature of capital (*h*), but mainly (2) by the appropriation of certain annual

(*c*) National Debt Act, 1870 (33 & 34 Vict. c. 71), s. 51.

(*d*) But not any accumulations (*Re Ashmead's Trusts* (1872), 8 Ch. App. 113).

(*e*) National Debt Act, 1870 (33 & 34 Vict. c. 71), s. 55. On an application for a re-transfer of stock transferred to the Commissioners for the reduction of the National Debt, it is sufficient to prove a legal title only (*Re Bigg* (1835), 1 Y. & C. (EX.) 245). As to the evidence necessary in support of such proof, see *Howard* v. *Kay* (1857), 4 Drew. 151; and title EVIDENCE, Vol. XIII., p. 502. The transfer will not be made to the beneficiary (*Ex parte Jameson* (*Mary*) (1875), L. R. 19 Eq. 430); and a re-transfer of stock cannot be made nor inquiries decided as to the beneficial owner in the absence of the legal owner (*Re Ashmead's Trusts* (1872), 8 Ch. App. 113). As to the terms upon which a transfer of stock and dividends into court will be made, see *Re National Debt Act*, 1870, *Ex parte Byrne*, [1897] 1 I. R. 61.

(*f*) *Lawrence* v. *Maule* (1859), 4 Drew. 472. In an action by three out of four beneficiaries for re-transfer, the fourth beneficiary is a necessary party (*Hunt* v. *Peacock* (1848), 6 Hare, 361). Whether or no upon an action for re-transfer the court will order an inquiry as to the beneficiaries depends on the circumstances of each case; see *Ex parte Gillett*, *Ex parte Bacon* (1818), 3 Madd. 28; *Ex parte Lavell* (1820), 2 Jac. & W. 397; *Ex parte Ram* (1837), 3 My. & Cr. 25; *Re Bishton and Crockett* (1858), 27 L. J. (CH.) 168; *Re Molony* (1860), 3 L. T. 465 (inquiry directed); *Ex parte Nicholl* (1823), Turn. & R. 119; *Re Avery* (1830), 1 Russ. & M. 356; *Ex parte Bouts* (1859), 5 Jur. (N. S.) 951 (inquiry not directed). Judgment may be given ordering a re-transfer to the survivor of two registered holders without requiring the concurrence of the beneficiaries (*Re Ackland's Trusts* (1872), 26 L. T. 418).

(*g*) *Ex parte Martin* (1821), Jac. 55; *Re Holland* (1844), 1 Ph. 379; *Re Ackland's Trusts*, *supra*.

(*h*) Money received on account of the China Indemnity (Finance Act, 1906 (6 Edw. 7, c. 8)), Suez Canal shares drawn for repayment (Finance Act, 1898 (61 & 62 Vict. c. 10)), composition of stamp duties on transfers of stocks and annuities (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 114; and see p. 720, *ante*), donations and bequests (National Debt Reduction Act, 1866 (29 & 30 Vict. c. 11), s. 6), forfeited deposits in post office and trustee savings banks (Savings Bank Act, 1891 (54 & 55 Vict. c. 21), s. 12; and see title BANKERS AND BANKING, Vol. I., p. 576), foreshore rights (Crown Lands Act, 1866 (29 & 30 Vict. c. 62), s. 13; and see title CONSTITUTIONAL LAW, Vol. VII., p. 145), repayments of advances for commutation of superannuation allowances to prison officers (Revenue, Friendly Societies and National Debt Act, 1882 (45 & 46 Vict. c. 72), s. 22), surplus land tax

SECT. 4. The National Debt.

balances known respectively as the New and the Old Sinking Funds.

The former consists of such portion of the annual sum fixed as the charge for the National Debt as is not required in any financial year for the annual charges which are made payable out of that sum (*i*). The latter consists of the surplus, if any, of income over expenditure, excluding expenditure out of loans authorised by any Act other than the annual Appropriation Act, during any financial year (*k*).

New Sinking Fund.

1634. Moneys available for the reduction of the Debt out of the New Sinking Fund are issued from time to time to the National Debt Commissioners (*l*), and must be applied by them within six months of the date of issue in purchasing, redeeming, or paying off either annuities charged on the Consolidated Fund, Exchequer Bonds or Bills or Treasury Bills, or any other form of debt for which the fund is specifically made available (*m*), but not in repayment of any advances made by the Banks of England and Ireland under the Exchequer and Audit Departments Act, 1866 (*n*), s. 12, or any loan borrowed on the credit of any sum which the Treasury is authorised to issue out of the Consolidated Fund towards making good the supplies granted to His Majesty (*o*).

Old Sinking Fund.

The sum available out of the Old Sinking Fund must be issued during the financial year next after that from which it is derived, and applied to the same purposes as the New Sinking Fund, with the addition that it may be applied to the repayment of advances under the Exchequer and Audit Departments Act, 1866 (*n*), but subject to the above-mentioned limitation as regards loans (*p*).

(Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 114), redemption of land tax (Land Tax Redemption Act, 1813 (53 Geo. 3, c. 123), s. 13; see title LAND TAX, Vol. XVIII., pp. 321 *et seq.*), Sinking Fund annuity (National Debt (Conversion of Stock) Act, 1884 (47 & 48 Vict. c. 23), s. 3).

(*i*) Sinking Fund Act, 1875 (38 & 39 Vict. c. 45), s. 3. The annual charges on the fund, which is now fixed at £24,500,000 by the Finance Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 35), are set out in the Sinking Fund Act, 1875 (38 & 39 Vict. c. 45), s. 2, and consist of certain annuities and interest, a sum already appropriated by the National Debt Act, 1870 (33 & 34 Vict. c. 71), towards reducing the Debt, and the charges payable to the Banks of England and Ireland for the management of the Debt.

(*k*) Sinking Fund Act, 1875 (38 & 39 Vict. c. 45), ss. 4, 5. In times of emergency the operation of this enactment is sometimes temporarily suspended by Parliament and the money devoted to other purposes; see, *e.g.*, Finance Act, 1900 (63 & 64 Vict. c. 7), s. 16.

(*l*) The Commissioners are the Speaker of the House of Commons, the Chancellor of the Exchequer, the Master of the Rolls, the Deputy Governor of the Bank of England, and the Lord Chief Justice of England (National Debt Reduction Act, 1786 (26 Geo. 3, c. 31), s. 14, as varied by the Life Annuities Act, 1808 (48 Geo. 3, c. 142), s. 32; the Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 25; and the Court of Chancery (Funds) Act, 1872 (35 & 36 Vict. c. 44), s. 4).

(*m*) As to these forms of debt, see pp. 547, 548, *ante*.

(*n*) 29 & 30 Vict. c. 39, s. 12; and see p. 541, *ante*.

(*o*) Sinking Fund Act, 1875 (38 & 39 Vict. c. 45), ss. 3, 10, as extended by the Treasury Bills Act, 1877 (40 & 41 Vict. c. 2), s. 7.

(*p*) Sinking Fund Act, 1875 (38 & 39 Vict. c. 45), ss. 5, 10; Treasury Bills Act, 1877 (40 & 41 Vict. c. 2), s. 7.

SECT. 5.—*Payments to Local Taxation Accounts.*

SECT. 5. **Payments to Local Taxation Accounts.**

Payment from Exchequer in relief of local taxation.

1635. Payments are made from the Exchequer in each year to the Local Taxation Accounts in relief of local taxation in England, Scotland and Ireland as follows :—

(1) The proceeds of the additional duties of customs and excise of 3*d.* the barrel on beer and 6*d.* the proof gallon on spirits imposed by the Customs and Inland Revenue Act, 1890 (*q*). The sum thus payable is to be taken to be, until Parliament shall determine to the contrary, the proceeds of those surtaxes in the financial year ending the 31st March, 1912 (*r*).

(2) A sum equal to the proceeds of the duties on licences for the sale of intoxicating liquors throughout the United Kingdom, and on carriage licences in Scotland in the financial year ending the 31st March, 1909 (*s*).

(3) The proceeds of the duties on the local taxation licences collected by the councils of the counties and county boroughs in England and Wales (*t*), and in Ireland, and of those duties collected in Scotland by the Commissioners of Customs and Excise (*u*).

(4) The estate duties grant, consisting of one-half the net proceeds of the probate (and inventory) duty and account duty (*v*), 1½ per

(*q*) 53 & 54 Vict. c. 8, s. 7. As to the relations between local authorities and the Exchequer, see, further, title LOCAL GOVERNMENT, Vol. XIX., pp. 350 *et seq.*

(*r*) Finance Act, 1907 (7 Edw. 7, c. 13), s. 17, as amended by the Revenue Act, 1911 (1 & 2 Geo. 5, c. 2, s. 17 (1)). The total sum issued out of the Exchequer under this head in the year ended the 31st March, 1912, was £1,384,075 3*s.* 9*d.* (Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons), No. 169 of 1912), p. 42). This amount is distributed between the local taxation accounts of the three kingdoms in the proportions of 80 per cent. to England, 11 per cent. to Scotland, and 9 per cent. to Ireland respectively (Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8), s. 7, applying the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 21, and the Probate Duties (Ireland) Act, 1888 (51 & 52 Vict. c. 60), s. 1.

(*s*) Finance Act, 1907 (7 Edw. 7, c. 13), s. 17 ; Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 88 (1), (2), as amended by the Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 17 (2). These revenues, although assigned to the relief of local taxation, are still collected by the Commissioners of Customs and Excise (Local Government Act, 1888 (51 & 52 Vict. c. 41), Sched. I.). The sum issued out of the Exchequer under this head in the year ended the 31st March, 1912, was £2,226,163 14*s.* 6*d.* (Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons), No. 169 of 1912), p. 42).

(*t*) As to these, see p. 684, *ante* ; and see title LOCAL GOVERNMENT, Vol. XIX., p. 351.

(*u*) Finance Act, 1907 (7 Edw. 7, c. 13), s. 17 ; Revenue Act, 1911 (1 & 2 Geo. 5, c. 2). The proceeds of the duties are the amounts collected within the year whenever they may have been assessed (*Beaufort (Duke)* v. *Income Tax Commissioners* (1912), 28 T. L. R. 301). The only one of these licences levied in Ireland is that for motor cars (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 89). The sum issued out of the Exchequer for the year ended the 31st March, 1912, was £473,983 8*s.* 8*d.* (Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons), No. 169 of 1912), p. 42). The surplus remaining from the carriage licence duties after deducting the cost of collection and the sum payable to the local taxation account is paid to the Road Improvement Fund (Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 90, as amended by the Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 18) ; and see p. 763, *post.*

(*v*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 21 ; Probate Duties (Ireland) Act, 1888 (51 & 52 Vict. c. 60), s. 1.

SECT. 5. Payments to Local Taxation Accounts.

cent. of the net capital value of the free personalty (situated in the United Kingdom) on which probate and inventory duty would have been paid if the estate duty had not been imposed (*w*), and such a further sum payable out of the estate duty upon all personalty, free or settled, and whether situated in the United Kingdom or not, as represents half the rates levied on agricultural land and remitted under the Agricultural Rates Act, 1896 (*x*), together with a further eleven-eightieths of such sum to be applied in aid of the rates on agricultural land in Scotland under the Agricultural Rates, Congested Districts, and Burgh Land Tax Relief (Scotland) Act, 1896 (*y*).

(5) Other sums amounting in the aggregate approximately to £1,000,000 are paid out of the Exchequer under the Local Government (Ireland) Act, 1898 (*z*), the Land Purchase (Ireland) Act, 1891 (*a*), the Local Taxation Account (Scotland) Act, 1898 (*b*), the Finance Act, 1908 (*c*), and the Finance (1909-10) Act, 1910 (*d*).

Provision is also made for the payment out of the Consolidated Fund for the benefit of local authorities, subject to regulations made by the Treasury, of half the proceeds of the duties on land values, including mineral rights duties (*e*).

SECT. 6.—*Payments to the Development and Road Improvement Funds.*

SUB-SECT. 1.—*Development Fund.*

Grants to Development Fund.

1636. A fixed sum of £500,000 is payable out of the Consolidated Fund to the Development Fund in each financial year up to and including the year ending the 31st March, 1915, for the

(*w*) Finance Act, 1894 (57 & 58 Vict. c. 30), s. 19. The sum issued out of the Exchequer in respect of these last two heads amounted in the year ended the 31st March, 1912, to £3,058,681 5*s.* 3*d.* It includes the amount granted by the Tithe Rentcharge (Rates) Act, 1899 (62 & 63 Vict. c. 17), s. 1, in aid of rates payable by owners of tithe rentcharge attached to benefices in England (Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons), No. 169 of 1912), p. 42); and see titles ECCLESIASTICAL LAW, Vol. XI., p. 750; ESTATE AND OTHER DEATH DUTIES, Vol. XIII., pp. 199, 200.

(*x*) 59 & 60 Vict. c. 16.

(*y*) 59 & 60 Vict. c. 37, s. 3. As regards England, the sums falling to be paid in relief of the rates are determined by the Local Government Board (Agricultural Rates) Act, 1896 (59 & 60 Vict. c. 16), s. 4); eleven-eightieths of the total sums thus found are allotted to Scotland (Agricultural Rates, Congested Districts, and Burgh Land Tax Relief (Scotland) Act, 1896 (59 & 60 Vict. c. 37)). The total amount issued from the Exchequer in the financial year ended the 31st March, 1912, in relief of rates under the Agricultural Rates Acts was £1,507,726 16*s.* 9*d.* (Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons), No. 169 of 1912), p. 42)). The relief to rates does not extend to Ireland (Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37), s. 48).

(*z*) 61 & 62 Vict. c. 37, ss. 48, 58 (1) (b).

(*a*) 54 & 55 Vict. c. 48, s. 5.

(*b*) 61 & 62 Vict. c. 56, s. 1.

(*c*) 8 Edw. 7, c. 16, s. 6 (3).

(*d*) 10 Edw. 7, c. 8, s. 89 (2); Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons), No. 169 of 1912), p. 42.

(*e*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 91. No payments have yet been made under this head (Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Papers (Commons), No. 201 of 1911 (No. 169 of 1912)).

SECT. 6. Payments to the Development and Road Improvement Funds.

purpose of promoting certain objects specified by statute (*f*). Advances are made from this fund and accounts are transmitted annually to the Comptroller and Auditor-General (*g*) by the Development Commissioners constituted under the Act in accordance with regulations made by the Treasury (*h*).

SUB-SECT. 2.—*Road Improvement Fund.*

Grants to Road Improvement Fund.

1637. There is paid out of the Consolidated Fund in each year to the credit of the Road Improvement Fund the amount of the net proceeds of the duties on motor spirit and on carriage licences (*i*).

Deductions from grants.

1638. In the case of both duties a deduction is first made of such sums as are certified by the Commissioners to be the cost of collecting them; and in the case of the duties on carriage licences there is a further deduction made of any sum which is payable to a local taxation account in respect of them (*k*) or to any council in respect of any deficiency in the proceeds of the duties (*l*).

Road Improvement Fund Account.

1639. The payments from the Exchequer are made to the credit of a Road Improvement Fund Account at the Bank of England in such instalments and at such times as the Treasury determines (*m*).

(*f*) Development and Road Improvement Funds Act, 1909 (9 Edw. 7, c. 47), ss. 1 (1), 2. The objects stated in the Act are:—

Aiding and developing agriculture and rural industries by promoting scientific research, instruction and experiments in the science, methods and practice of agriculture (including the provision of farm-institutes), the organisation of co-operation, instruction in marketing produce, and the extension of the provision of small holdings; and by the adoption of any other means which appear calculated to develop agriculture and rural industries;

Forestry (including (1) the conducting of inquiries, experiments, and research for the purpose of promoting forestry and the teaching of methods of afforestation; (2) the purchase and planting of land found after inquiry to be suitable for afforestation);

The reclamation and drainage of land;

The general improvement of rural transport, including the making of light railways but not including the construction or improvement of roads;

The construction and improvement of harbours;

The construction and improvement of inland navigations;

The development and improvement of fisheries; and for any other purpose calculated to promote the economic development of the United Kingdom (*ibid.*, s. 1).

"Agriculture and rural industries" includes agriculture, horticulture, dairying, the breeding of horses, cattle, and other live stock and poultry, the cultivation and preparation of flax, the cultivation and manufacture of tobacco, and any industries immediately connected with and subservient to any of these matters (*ibid.*, s. 6).

(*g*) See p. 542, *ante*.

(*h*) Development and Road Improvement Funds Act, 1909 (9 Edw. 7, c. 47), ss. 2, 3; Stat. R. & O., 1910, p. 75.

(*i*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 90, as amended by the Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), s. 18 (3); see pp. 597, 620, 689, *ante*; and see title HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., pp. 28, 29.

(*k*) See p. 685, *ante*.

(*l*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 90, as amended by the Revenue Act, 1911 (1 & 2 Geo. 5, c. 2), ss. 17, 18; see pp. 684, note (*s*), 761, *ante*.

(*m*) Regulations dated the 8th June, 1910, made by the Treasury under the Development and Road Improvement Funds Act, 1909 (9 Edw. 7, c. 47), s. 12, and the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 90.

SECT. 6. Payments to the Development and Road Improvement Funds.

This account is drawn upon by the Road Board established by the Development and Road Improvement Funds Act, 1909 (*n*), who may make payments out of it in the manner directed by the Treasury (*o*).

Accounts.

1640. Accounts of the receipts and expenditure of the fund are rendered monthly to the Comptroller and Auditor-General (*p*), and an annual account is sent to him not later than six months from the close of the year to which it relates (*q*).

SECT. 7.—*Payments to Local Education Authorities.*

Education grants.

1641. Grants are also made from the Exchequer of subventions to local education authorities under various heads (*r*). These are paid out of the sums voted annually for the Supply Services under the head of "Education, Science and Art" (*s*).

SECT. 8.—*The Paymaster-General.*

Appointment and nature of office.

1642. The Paymaster-General, upon whom with the various principal accountants and sub-accountants (*t*) devolves the duty of making the actual disbursements of the public moneys authorised by the Treasury (*a*), is appointed by royal warrant, and holds office during the pleasure of the Crown (*b*). He is required to take the oath of allegiance (*c*).

Under the practice at present recognised the Paymaster-General is an unsalaried member of the Ministry, and retires from office upon a change of Government (*d*). His personal duties are merely nominal, the work being attended to by a permanent Assistant Paymaster-General and a department regulated by the Treasury (*e*).

The office of Paymaster-General is not to be deemed a new office of profit within the meaning of the Succession to the Crown Act,

(*n*) 9 Edw. 7, c. 47, s. 7.

(*o*) Regulations dated the 8th June, 1910, r. 4.

(*p*) See p. 541, *ante*.

(*q*) Regulations dated the 8th June, 1910, rr. 6, 7. The sums issued from the Exchequer to the credit of the fund in the financial year ended the 31st March, 1912, were :—

	£	*s.*	*d.*
For motor spirit duties	613,957	5	7
carriage licence duties	595,901	17	6

(Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons), No. 169 of 1912), p. 41).

(*r*) As to these, see title EDUCATION, Vol. XII., pp. 48—50.

(*s*) Appropriation Act, 1912 (2 & 3 Geo. 5, c. 7), Sched. B, Part 8; Finance Accounts of the United Kingdom, 1911-12 (Parliamentary Paper (Commons), No. 169 of 1912), p. 76.

(*t*) See p. 765, *post*.

(*a*) For details of the powers and duties of the department of the Paymaster-General, see Paymaster General Acts, 1835 (5 & 6 Will. 4, c. 35), 1848 (11 & 12 Vict. c. 55), and 1889 (52 & 53 Vict. c. 53), and Secretary at War Abolition Act, 1863 (26 & 27 Vict. c. 12); and, as to issues of money to him, see p. 748, *ante*; see also title COURTS, Vol. IX., p. 69.

(*b*) Paymaster General Act, 1835 (5 & 6 Will. 4, c. 35), s. 4.

(*c*) Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), s. 4, Sched. I.

(*d*) As to ministers generally, see title CONSTITUTIONAL LAW, Vol. VII., pp. 34 *et seq.*

(*e*) Paymaster General Act, 1835 (5 & 6 Will. 4, c. 35), ss. 3, 10; Paymaster General Act, 1848 (11 & 12 Vict. c. 55), s. 4; and see title CONSTITUTIONAL LAW, Vol. VII., pp. 21, 40, note (*d*).

1707 (*f*), nor does acceptance of the office vacate a seat in the House of Commons or debar the holder from being a member (*g*).

SECT. 8. The Paymaster-General.

SECT. 9.—*Accounting Officers.*

Accounting officers.

1643. The disbursements of public moneys not made in the office of the Paymaster-General are made by various accounting officers (*h*), who are officers in the department charged with the expenditure on the service in question, appointed on the nomination of the Treasury (*i*).

Appointment and liabilities.

On appointment such officers may be required to give security by a bond with a surety or sureties (*k*), and are liable to fine and imprisonment and to be deprived of the right to hold any office under the Crown for furnishing false statements or returns of moneys collected by or entrusted to them, or of the balances under their control (*l*).

Control of Treasury.

1644. The Treasury exercises control in regard to the banks at which accounting officers may open accounts, the consolidation of accounts, the opening of accounts of Government stocks or annuities, and the sale and transfer of such stocks (*m*).

Audit of accounts and payment of balances.

1645. The accounting officers may be required to transmit their accounts with the authorities and vouchers for audit by the Comptroller and Auditor-General, who is required, upon being satisfied, to give a certificate of discharge (*n*). On the determination of his office every accounting officer must pay over any balance of public moneys in his hands to the Treasury, who, if the Comptroller and Auditor-General reports that money has been improperly withheld, may recover the same with interest (*o*). Against disallowances or charges by the Comptroller and Auditor-General accounting officers have a right of appeal to the Treasury (*p*).

(*f*) 6 Anne, c. 41; see title PARLIAMENT, Vol. XXI., p. 659.

(*g*) See *ibid.*, pp. 659, 660.

(*h*) This description was adopted by the Treasury in place of the name "accountant"; see Treasury Minute dated the 18th August, 1872. The distinction between the terms "principal accountant" and "sub-accountant," so far as still used, is that the former receive issues direct from the Exchequer Account while the latter are provided with funds either by imprest from the principal accountants or from other sources, such as fees or moneys retained as appropriations in aid.

(*i*) Parliamentary Paper [Cd. 387], 1902, pp. 1, 206.

(*k*) Government Offices Security Act, 1810 (50 Geo. 3, c. 85), s. 1.

(*l*) Embezzlement by Collectors Act, 1810 (50 Geo. 3, c. 59), s. 2; see also stat. (1541–42) 33 Hen. 8, c. 39, ss. 48, 49; stat. (1542–43) 34 & 35 Hen. 8, c. 2.

(*m*) Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), ss. 18—20; and as to the Treasury, see pp. 539 *et seq.*, *ante*.

(*n*) Exchequer and Audit Departments Acts, 1866 (29 & 30 Vict. c. 39), ss. 33—38; and see pp. 541, 542, *ante*.

(*o*) *Ibid.*, s. 41. As to recovery of Crown debts, see title CROWN PRACTICE, Vol. X., pp. 1 *et seq.*

(*p*) Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), s. 43.

PART XIII. LOCAL TAXATION RETURNS.

Part XIII.—Local Taxation Returns.

Nature of returns.

1646. Annual returns of local taxation for the year ending on the 25th March (*q*) are required to be made to the Local Government Board, and by it submitted to Parliament (*r*), showing the sums levied or received in respect of certain compulsory local rates, taxes, tolls and dues (*s*), and the expenditure thereof, and such other particulars as the Board may direct (*t*).

When made.

They should be sent within one month after the audit of the accounts to which they relate, or, if the audit is not completed within six months from the end of the financial year, then on the expiration of the six months, or if there is no audit, within one month of the end of the financial year (*a*).

By whom made.

1647. The statutory return must be made by the clerk to the body of persons having power to levy the rates, or, where there is no clerk, by the treasurer or other person having charge of the accounts; and where the rates are to be accounted for by churchwardens or any officers or persons not authorised to act as a board, those churchwardens, officers, or persons are responsible for the return (*b*).

Taxation in respect of which no return is necessary.

1648. Returns are not necessary of rates and taxes which are levied for the public revenue (*c*), where the accounts are audited by a district auditor (*d*); poor rates (*e*); tolls and dues taken by a

(*q*) Subject to the Board prescribing some other date on the application of the authority (Local Taxation Returns Act, 1877 (40 & 41 Vict. c. 66), s. 1).

(*r*) *Ibid.*, s. 1.

(*s*) These include church and chapel rates, sewers rates and general sewer tax and all rates levied by commissioners of sewers, lighting and watching rates, rates levied under local Acts of improvement and of paving, lighting, draining etc., any town or district; and statutory tolls and dues in respect of markets, bridges, or harbours (Local Taxation Returns Act, 1860 (23 & 24 Vict. c. 51), s. 1, Sched.; see also Highway Accounts Returns Act, 1879 (42 & 43 Vict. c. 39), s. 2); and see titles HIGHWAYS, STREETS, AND BRIDGES, Vol. XVI., p. 131; LOCAL GOVERNMENT, Vol. XIX., p. 288; MARKETS AND FAIRS, Vol. XX., p. 29; METROPOLIS, Vol. XX., p. 452; POOR LAW, Vol. XXII., p. 538; WATERS AND WATERCOURSES.

(*t*) Local Taxation Returns Act, 1860 (23 & 24 Vict. c. 51), ss. 1, 2; Local Taxation Returns Act, 1877 (40 & 41 Vict. c. 66), s. 1; see also p. 685, *ante*.

(*a*) Local Taxation Returns Act, 1877 (40 & 41 Vict. c. 66), s. 1. The Local Government Board may approve an alteration in the dates of the making up of accounts, and of audit and the appointment of auditors, to meet the statutory requirements as to making returns (*ibid.*); and are required to make provision for such changes of dates for the convenience of local authorities (*ibid.*, s. 4).

(*b*) Local Taxation Returns Act, 1860 (23 & 24 Vict. c. 51), ss. 1, 3; Local Taxation Returns Act, 1877 (40 & 41 Vict. c. 66), ss. 2, 3. For penalties in default, see Local Taxation Returns Act, 1860 (23 & 24 Vict. c. 51), s. 4; Local Taxation Returns Act, 1877 (40 & 41 Vict. c. 66), s. 2.

(*c*) Local Taxation Returns Act, 1860 (23 & 24 Vict. c. 51), s. 1.

(*d*) *Ibid.*, s. 5; District Auditors Act, 1879 (42 & 43 Vict. c. 6), s. 3; and see pp. 541 *et seq.*, *ante*.

(*e*) Local Taxation Returns Act, 1860 (23 & 24 Vict. c. 51), s. 7; see, generally, title RATES AND RATING, pp. 3 *et seq.*, *ante*.

railway, canal, or joint stock company as profits of its undertaking, or tolls or dues taken by prescription or otherwise as private property (*f*).

(*f*) Local Taxation Returns Act, 1860 (23 & 24 Vict. c. 51), s. 8.

REVENUES OF THE CROWN.

See CONSTITUTIONAL LAW.

REVERSIONS AND REMAINDERS.

See REAL PROPERTY AND CHATTELS REAL; SETTLEMENTS.

REVISING BARRISTERS.

See BARRISTERS; ELECTIONS.

REVOCATION OF WILLS.

See WILLS.

REWARD.

See CRIMINAL LAW AND PROCEDURE.

RIGHT OF AUDIENCE.

See BARRISTERS; PARLIAMENT; SOLICITORS.

RIGHT OF WAY.

See EASEMENTS AND PROFITS À PRENDRE.

RIGHTS IN RELATION TO LAND.

See COMMONS AND RIGHTS OF COMMON; EASEMENTS AND PROFITS À PRENDRE; FERRIES; FISHERIES; GAME; HIGHWAYS, STREETS, AND BRIDGES; LANDLORD AND TENANT; MINES, MINERALS, AND QUARRIES; MORTGAGE; OPEN SPACES AND RECREATION GROUNDS; PARTITION; REAL PROPERTY AND CHATTELS REAL; SALE OF LAND; WATERS AND WATERCOURSES.

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